The LifeSpan™ Courier:
TLC Planning™ Client Newsletter

Summer 2023

Digital Assets: Are They More than Ones and Zeros?

One of the burgeoning areas of estate planning law is planning for digital assets. Technology continues to become more and more complicated (and some forms, such as artificial intelligence, become creepier). As technology develops, the law must develop to deal with it. However, there is naturally a delay in the development of the law with respect to the field it attempts to regulate. The law can sometimes be a slow learner.

Estate planning law is trying to keep up with the digital world. Fifty years ago, digital property did not exist. Now, in a world where it is commonplace to work remotely and much of people's lives are lived online, digital property is everywhere. That begs the question: what happens to all that digital property when you die?

Illinois law says you can direct, in your living trust, what should happen to your digital accounts. As you have heard us say many times, every asset in your estate must be properly titled into your trust in order for the trust to control it. In our office, we have every client sign a document (called a "Bill of Sale") that says you (the client) assign ownership of your digital accounts to your living trust. Your living trust says the trustees have power to take control of digital accounts, terminate them, claim rewards points (such as flight miles), etc. At your client update program, you always sign a new Bill of Sale, which would sweep in any online accounts you opened since the previous Bill of Sale. If your family (trustee) has all your passwords, we will recommend that they go online and terminate all your accounts as soon as possible after death.

Sounds easy, right? I'll just sign a Bill of Sale at every CUP and I'll be good to go! Not so fast! It's not always so easy.

Many online account providers (such as Facebook) have tools for controlling your account at your death. In some cases, under Illinois law, any direction you make through such an online tool from the account provider to control that account at your death will override any instructions in any estate planning documents you have signed. Leaving your death trustee to settle your accounts will create a real headache for them at your death, as they will have to check in each online account to ensure that you did not use the company's legacy tool.

To help you help your death trustee avoid that kind of headache, we regularly recommend a company called Directive Communication Systems (DCS) to our clients. DCS adds some structure to closing your accounts. They, as a business, have gone further to get a level of agreement with various account providers. If DCS tells providers to terminate or transfer an account, the providers will follow that directive—and that's even without passwords! (DCS does not collect your passwords; they do not need them in order to tell the provider what to do with your accounts.) DCS requires you to download a browser plugin. As you log into your various online accounts, DCS will ask you whether you'd like to capture that account in your DCS portfolio.

Now, if you're wondering if just signing up for DCS and paying the annual fee will solve all your digital property problems, it's not that simple. In every case, whether you use DCS or not, one potential pitfall with digital property is that not every piece of property was covered. If you don't use DCS, and you have online accounts that your family doesn't know about (or doesn't have passwords for) how will your family find and close them? Even if you use DCS, DCS can only act on accounts you've captured in your portfolio. Finally, just capturing accounts in your DCS portfolio will not take care of digital assets like cryptocurrencies, NFTs, etc. A full discussion on cryptocurrencies and the like will have to be saved for another article.

All of that being said, why should you care? In a nutshell, there are a few risks involved in not planning for your digital property. One risk is that your identity could be stolen. Nefarious actors who see you've passed away (ironically, they usually find that out online, by the way) may hack into your accounts and steal your personal information. They might steal your social security number (and identity), credit card information, information about your family and where they live, etc. A second risk is that recurring charges in your online accounts might be overlooked. Your spouse may not be aware of the accounts you've set up automatic payments for and may not catch those charges in time. Finally, you may have digital assets of worth (such as credit card rewards points/miles, cryptocurrencies, NFTs, etc.) that would not transfer to your beneficiaries.

Though the digital world is growing more and more intimidating, we owe it to our families not to just put our heads in the sand and hope they can work out the mess we've made after we're gone. We've said it many times over, an estate plan that works is an estate plan that does all the good it can do. There's a lot of good that can be done by planning for your digital property. There's a lot of headache that could result from doing nothing. – *Marcus Collins*

Governing By Crisis

As this Newsletter goes to print, the game of chicken continues between the White House and Congress over the debt ceiling.

Incredible to me. Some recent economic indicators: March saw the federal budget deficit come in at $378.1 billion, $115.7 billion over the February deficit and $185.5 billion above the March 2022 deficit. The deficit for the first six months of fiscal year 2023, at $1.1 trillion, is $432.5 billion more than the first six months of the previous fiscal year. In March, government receipts totaled $313.2 billion and $2.0 trillion for the current fiscal year. Government outlays were $691.3 billion in March and $3.1 trillion through the first six months of fiscal year 2023. By comparison, receipts in March 2022 were $315.2 billion and $2.1 trillion through the first six months of the previous fiscal year. Expenditures were $507.8 billion in March 2022 and $2.8 trillion through the comparable period in FY22.

Funding Alert!

Hello! I hope all of you have had a great year so far! This year I've spent a great deal of time entering the information you send to us in the Asset Review Reports. It's been an enjoyable change from the usual legal work that I typically do.

However, I've noticed a trend that there are certain kinds of assets that can easily fall through the cracks and not be funded. Even worse, these assets may be valued in the hundreds of thousands of dollars!

The good news is, with a little foresight and almost no work we can easily fund these assets and avoid the complication, expense, and headache for your family.

The assets I'm referring to typically are in three categories: Farm Machinery, Crops/Inventory, and livestock. What these assets have in common is that we fund them all through the Bill of Sale. This document that we provided you at your first signing and every Client Update Program afterwards is used to fund any asset that don't have a title.

The problem comes when we don't know what untitled property you own. If for example, you buy farm machinery and don't let us know, we won't know to include farm machinery on the bill of sale, and so it won't be funded!

So, how can you tell if we have funded your untitled property? The easiest way is to check your most recent Asset Report, located under "Tab C" of your Black Client Organizer. Close to the end there should be a line item for "Machinery" or "Crops/Inventory" or "Livestock." If you have that line item, we know about your untitled property and everything should be funded properly.

If you don't find any line item contact us and let us know. You can email me at brent@tlcplanning.com. You could also call the office at 618-548-3729. We will review your funding and if you have untitled assets we will send you a revised Bill of Sale. You sign and date it and mail it right back to us, and that would resolve the problem! We no longer list out each piece of farm machinery individually. If farm machinery is referenced on your Asset Report this should mean that all machinery is funded. – *Brent*

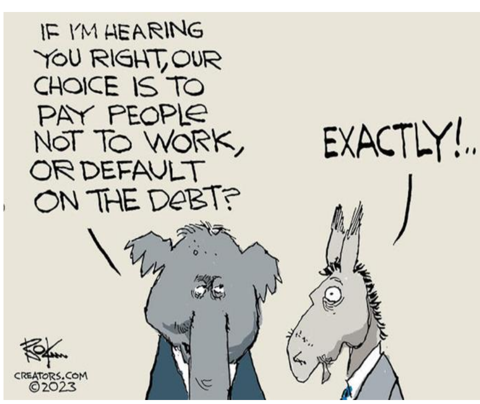
For future reference, save this newsletter in your ***LifeSpan™ Client Organizer*** *under* ***Tab F***

Gatekeepers: Review and Preview

At the 2023 Annual Family Reunion™ (AFR) we spent some time on the above topic. This was one of the most commented-about parts of the AFR, so I'd like to cover the issues again in writing for you.

Review: Almost all clients appreciate the idea of protected "school bus" trusts for your beneficiaries, and after your death your beneficiaries (your kids typically) will each receive their part of your estate in such a trust. Most of your beneficiaries are responsible adults. You aren't leaving the assets in trusts in order to tie their hands; rather, you want to give the beneficiary greater control of their inheritance by providing a tool to block adverse parties (lawsuits and divorces being prime examples) from reaching the inheritance. So, we sometimes call the protected trust a "Beneficiary Controlled Asset Protection Trust."

For decades now we have designed these trusts so that your responsible child becomes trustee (Beneficiary Trustee) of his or her own inherited trust. The Beneficiary Trustee handles all day to day trust activities, such as choosing how to invest, collecting the income and reinvesting, filing the annual tax return, etc. Then every such trust has a "gatekeeper" role to be filled. The idea is that if anyone (think, a judge in the lawsuit or the divorce court) ordered your child to give trust money to the adverse party, we want your child to honestly say, "I do not have the legal power to do that without the consent of" another person. This other person is the gatekeeper. The gatekeeper has a legal duty to say "no" to any money leaving the trust for a purpose that is not in the best interests of your child. The law is clear that a court would not order a gatekeeper to violate their legal duty.



Your responsible child gets to select the person to be their gatekeeper.

In our legal documents our standard approach for decades has been to fill the gatekeeper role with a "Distribution Cotrustee" selected by your child. Clients use different approaches to define the "pool" from which the Distribution Cotrustee will be selected. Some clients, exercising the most cautious, "let's make sure this trust is administered correctly over my child's lifetime" approach, require the child to select a professionals. Typically this would be an accountant, an attorney, or a corporate trustee. Clients don't name the particular person; rather, they say the child must pick someone who meets those professional designation. Other clients leave greater discretion to the child and allow them to select professionals or nonprofessionals (such as a fishing buddy, golfing buddy, brother in law, cousin, etc.) as their Distribution Cotrustee. The only strict rule is, the Distribution Cotrustee must be "independent": this basically means it cannot be an immediate family member or a subordinate at work.

Trustees of a trust are responsible for three main areas: (1) choosing how to invest the trust assets, (2) administering the trust assets, collecting the income, filing the income tax return, etc., and (3) distributing funds to the beneficiary as needed. The child as Beneficiary Trustee handles the first two. The Distribution Cotrustee has equal authority over the third. This "gatekeeping" role then is to approve any and all reasonable distributions from the trust that the beneficiary wants to take, but to say "No" to any adverse threat or demand (lawsuit, divorce, etc.).

Even though their actual function is very narrow, the Distribution Cotrustee is a trustee with the Beneficiary Trustee. Some people your child could select as a Distribution Cotrustee might not like the fact that their name and some personal data will be requested by financial institutions for the trust accounts. As a result, your child may have a more difficult time finding a friend willing to serve that role.

Committed as we are to estate plans that work—*provide all the intended benefits for as long as they are helpful to the client's family*—we want to make sure no child with a protected trust finds reasons to complain or be tempted to try to terminate the trust. So we are on the lookout for ways to make things as smooth and easy as possible for the responsible beneficiaries to keep their trust going and have the strongest possible protection.

Preview: This led us to the concept of a Distribution Protector. Recent trust laws allow a trust to appoint people in positions other than "trustee" and to still have authority with respect to the trust. So our theory (well-founded, although we have not yet implemented it in any of our clients' plans) is that we could let your child, Beneficiary Trustee, appoint a Distribution Protector instead of appointing a Distribution Cotrustee. The Distribution Protector would serve the gatekeeper function, without being listed as a trustee on investment paperwork. To work, the Beneficiary-Trustee would ask the Distribution Protector for prior approval before taking money out of the trust to spend. This practically mirrors the relationship with the Distribution Cotrustee. The Distribution Protector would approve any and all reasonable distributions from the trust that the beneficiary wants to take, but say "No" to any adverse threat or demand (lawsuit, divorce, etc.).

Since the Distribution Protector is not a cotrustee, this allows for a little less formality as your child manages his or her own inherited protected trust. Ease of use. What might the downside be? Since the Distribution Protector is not listed on the investment accounts it would be easy for the Beneficiary-Trustee to simply take money out of the trust and not ask or tell the Distribution Protector...it makes it easier for the beneficiary to violate the terms of the trust and no one would know until it's too late.

So, for clients who want to make the protected trusts work slightly easier for their kids, and who totally trust the kids' judgment and control of the inheritance, we are going to be offering this Distribution Protector option in some future update. It might not be appropriate for a beneficiary who you feel should be held more accountable.

More will be forthcoming! – *Curt Ferguson*

Team Updates:

Gayla Ball, our Education & Settlement Coordinator, retired as of April 12 after 20 years of service!

Gayla was a huge asset to our firm in both of her positions. Her energetic and compassionate personality was contagious. The sign on her desk said "this place would be boring without me." The Estate Planning Center will miss her deeply. We know many of you will miss her as well. Her retirement will allow her to be a full-time Gigi and serve at her church.

Lauren Woodward, former assistant Funding Coordinator, has now moved into the position of Settlement Coordinator. She is doing an outstanding job in her new position!

Kristin Donoho joined The Estate Planning Center May 1, 2023 as Receptionist and Funding Support. She has been busy learning new things about estate planning and has enjoyed getting to know new people. **Kristin** grew up in Salem and likes working close to home. She enjoys spending time with her family and listening to Christian music. **Kristin** looks forward to building relationships with our clients. **Kristin** and her husband Zach have two children and live in Salem.

We Appreciate You!

Our client appreciation banquet is set for **November 14, 6pm, at the Carriage House facility in Altamont, Illinois**, right along I-70. This is your annual chance to socialize, eat a great catered dinner, listen to good music…and build on the sense of community we have among our client families.

Please make a reservation at least two weeks in advance if you will be able to attend. As usual, you will be entertained with Classical and Christmas music (string ensemble, piano and vocals). Since space is limited, clients are welcome along with immediate family members.

We look forward to seeing you there!

Hello from the
Settlement Department!

It has been an eventful spring around the office with new members being added to the team so we can serve you, our clients, better. In the middle of the excitement there have been some bittersweet changes too. Gayla Ball, our Education & Settlement Coordinator of 20 years has retired. Her retirement will allow her to spend more time with her two beautiful granddaughters and serve at her church. She is kind, compassionate and thoughtful and played such a big part in the office here, meeting with each family as they went through the process of settling their loved one's estates, as well as coordinating our educational programs throughout the year. We miss her so much and know many of you will as well.

Since Gayla's retirement in April, I have stepped into her position as Settlement Coordinator. I have been in the Settlement department for almost 2 months and have quickly learned that Gayla left some big shoes to fill! I am excited for this new season!

Have a great summer y'all. - *Lauren Woodward*

"Legalism is no substitute for actual morality." - Ben Shapiro

The Role of a Corporate Fiduciary

At the Annual Family Reunion™ (AFR) we introduced a corporate fiduciary headquartered in Olney, Illinois. **TrustBank** was represented by at least two people at each AFR. We learned about TrustBank from an attorney friend in Arizona, who had received excellent service their Arizona branch. When a corporate trustee is needed, it can be hard to find an institution that is big enough to be stable and has a full service team, yet small enough to provide responsive, customized service.

After knowing and working with them for several years, TrustBank is delivering in Illinois as well.

Why would we introduce a corporate fiduciary to our clients? After all, when family members serve as trustee and hire us to guide them, the administrative fees are capped and the family stays in control. In our experience, most families won't really "need" a corporate trustee. But who might? We think the corporate trustee like TrustBank may be appropriate for the following situations.

1. *<u>Perfect Busy Child</u>: maybe one of your perfect beneficiaries is simply busy and doesn't want to manage their own inherited school bus trust. They might want to select a corporate trustee to handle everything. They could select TrustBank and let them handle all the paperwork, tax returns, and investment selection…and send the beneficiary money on request.*
2. *<u>Special Needs Trust</u>: if you have a beneficiary who is eligible for needs-based assistance, their inheritance will (or should) pass to them in a trust which they do not control. Funds can be spent for special needs, which is basically whatever the government assistance doesn't provide them. Very technical rules must be followed, however, or else the beneficiary can lose their benefits. A corporate trustee is great choice for such a trust.*
3. *<u>Irresponsible Beneficiary</u>: you may have a child who isn't so perfect. Substance abuse. Criminal record and habits. Or just clueless with money. Rather than having a sibling be trustee for that child's trust share, appoint a third party who cares, but is free from the emotional connection—a corporate trustee.*
4. *<u>Fractious Family</u>: maybe you have good kids, but they don't get along. They are suspicious of each other. They would never be able to work together cooperatively. Save everyone the stress and hassle by appointing an objective third party as your Death Trustee to wind up your affairs and divide your estate—a corporate trustee. In this situation, the corporate trustee would not require the services of our firm, as they would be responsible for all the things that we do.*

In your plan, any place where there is a trustee role, the family member(s) involved could simply choose to use TrustBank to fill the spot when that time comes. You don't have to write TrustBank in by name. Specifically, in the first two scenarios, your beneficiaries can simply choose to use the corporate trustee after they inherit. In the third and fourth example, it would be better for you to require that a corporate fiduciary serve, in which case you might specify TrustBank as your first choice.

So for those of you who expressed the concern …**no, TrustBank is not in competition with what we do**. Our attorneys do not serve as trustees in any of these four roles. In the Fractious Family, TrustBank as the Death Trustee would be doing what otherwise we would help a family member do so our services would be displaced in that instance; but honestly, our feelings won't be hurt if we don't get hired for that work! - *Curt*

Summer Reminders

Newness is in the air and the fields of corn and beans are well on their way to filling up the landscape! As y'all are gearing up for a fun filled summer I'd like to just give you a few 'housekeeping' reminders.

I know you've heard us say this before and you likely will again, but I believe it bears repeating. We promise we will NEVER send you "junk mail". Everything you receive from us is sent for a reason, so go ahead, open it up and give it a thorough reading. There are always clear instructions for what needs to be done and how to accomplish the goal.

Our new texting system is working wonderfully, and it has been a great aid in efficiency and effectiveness for those of us running the front of the office. I'll just give a quick review for those of you who are new here.

The morning before your scheduled appointment you will receive a confirmation text from our office with the date, time, and what you will need to bring you for that specific appointment. All you have to do is reply "c". You can also text us any question you might have. It's really us on the other end; not a robot. For those of you who don't text, never fear, we are still very much in the business of talking on the phone and will happily take your call.

I pray you and your families have a marvelous summer! – *Olivia Grace Davis*

"[T]here is a degree of depravity in mankind which requires a certain degree of circumspection and distrust."

- James Madison

Funding For The Ever Vigilant

Wow, summer is here again. Time flies when you are having fun with funding! Just a few friendly reminders spurred by the changing interest rate environment, a texting-capable office, and some of the points raised at this year's Annual Family Reunion™.

An old investment idea is new again – *Certificates of Deposit*. With returns now approaching 5%, more people are opening CD's (to put it in perspective, the last time we saw these rates was 2007!) When you get a new CD, send in a copy of the Certificate for Red Check Review™ as soon as possible. If the CD replaces an already existing account, *be sure to let us know with a note when submitting.*

As a reminder, there are several ways you can submit the new Certificate (or, evidence of any other type of asset): use your smartphone to take a picture and text it to 618-548-3729 with a note ATTN: SHERRY; fax to 618-548-3585; email to Sherry@tlcplanning.com; or just plain old snail mail to The Estate Planning Center, 919 W. Main, Salem, IL 62881.

After comments from our attorneys at this year's AFR, many of you are retitling that old truck, car, or trailer that was left in your personal name to your trust. If now's the time, let me know and I can help with an application for a corrected title. The fee to the state is $53 which is a very small price to pay to ensure your plan works as smoothly as possible. Of course, if you buy another vehicle (used or old) there is no reason to leave it out of your trust. Don't forget to use your sample title application so that any newly purchased vehicles are titled correctly (Client Organizer, Tab D).

Buying more real estate? Title it according to your Certification of Trust (Black clip, in your estate planning portfolio. If you want sample deed language, let me know and I can provide you with it. For married couples who are unsure which trust should take title, contact us. And be sure to continue to keep us informed as those real estate values change!

As always, I am here to answer any funding questions. - Sherry French

Notice to Empowered Inheritance Program™ participants:
If we are doing your trust tax return and it includes income from multiple states, you should anticipate an increase in 2024 annual service fees to reflect the added complexity.

Lifespan™ Clients, Helpers, Adult Beneficiaries & Trusted Advisors, You Are Invited To Attend our 2023 "Settlement Security System" Family Education Program™

It has been several years since we offered education to help prepare "Helpers" for what needs to be done when a person with a well-planned estate passes away. Year after year we gain more experience with this, seeing how different families deal with the loss and embrace the steps necessary to secure the benefits that the client designed into the plan. Our optimistic objective is to briefly cover each of the following phases of doing what the living trust requires:

1. **Administrative duties of any trustee when death occurs**
2. **Establish Family Trust for surviving spouse**
3. **Set up the "School Bus" Trusts for beneficiaries**
4. **Maintain "School Bus" Trusts for ongoing protection**

This fast-paced presentation will take much of the mystery out of the process of securing the plan benefits, and provide a bird's eye view of the advantages to surviving spouses and beneficiaries.

When and where?

The same program will be presented on each of these dates:

Saturday, June 17 at 9:00am, Salem, EPC Learning Center *(in person & Zoom)*
Monday, June 26 at 6:00pm, Salem, EPC Learning Center *(in person & Zoom)*
Wednesday, June 28 at 9:00am, Salem, EPC Learning Center *(in person & Zoom)*
Thursday, June 29 at 1:00pm, Bloomington *(in person only)*

Since seating is limited, reservations are required.

Make your reservation as soon as possible!
Call: 618-548-3729 or 866-900-2878 or email: kristin@tlcplanning.com

"A tyranny sincerely exercised 'for the good of' its victims may be the most oppressive."
- C.S. Lewis

"A people that values its privileges above its principles soon loses both."
—Dwight D. Eisenhower

THE ESTATE PLANNING CENTER
Curt Ferguson, Sam Collins & Marcus Collins
919 West Main
Salem, IL 62881

lifespan™
PLANS THAT WORK. PEOPLE WHO CARE.™

Change Service Requested

"I believe that people don't care how much you know until they know how much you care." Richard H. Ferguson 1936-2008

It's Not Really A Secret

Poverty problem? Crime problem? Racism problem? Most of the problems we see in our country today arise from the deeper moral decay, a trend away from very basic things we used to learn in kindergarten, if not Sunday School. The abuse of alcohol and now the legalization of additional mind-altering drugs is not making our societies safer, happier or more productive. No matter what our elected leaders tell themselves about its harmlessness and revenue-raising potential, marijuana use has been linked to an increased risk for developing a number of psychiatric conditions, including schizophrenia, depression, and substance use disorders. Look up the article "Marijuana, Mental Illness, and Violence" in the speech digest *Imprimis* online. With respect to poverty and the many challenges that it adds to life, left-leaning The Brookings Institution concluded that there were three basic things a person needs to do: "Let politicians, schoolteachers and administrators, community leaders, ministers and parents drill into children the message that in a free society, they enter adulthood with three major responsibilities: at least finish high school, get a full-time job and wait until age 21 to get married and have children."

There really are pretty simple solutions to the problems we see, but for the most part, individuals have to make the choices for themselves. It's the tall task of the older generation to lead in word and deed, illustrating what the truly "good life" looks like.

"Liberty cannot be established without morality, nor morality without faith." –Alexis de Tocqueville