



# The Financial and Estate Planning Council of Metropolitan Detroit, Inc.

April 2013

30600 Northwestern Hwy., Suite 208, Farmington Hills, MI 48334 • (248) 538-7654 • FAX: (248) 538-7656

## President's Message

As the graying of Winter moves behind us, Spring is in the air and with it, the anticipation of new beginnings and opportunities for all of us. And we, as members of the Council, all share a common commitment for helping others. To that end, I ask all of you for your support for the upcoming Membership Meeting and the 7<sup>th</sup> Annual Charity Golf Outing on May 20, 2013. It will be an excellent opportunity to begin Spring, enjoy a good game of golf, break bread, and visit friends, both new and old, after a long Winter's presence.

This year's Charity event will be at the wonderful Wabeek Country Club, and our Charity will be the Leader Dogs for the Blind. Founded by three Detroit-area Lions Club members in 1939, Leader Dogs for the Blind provides guide dogs to people who are blind and visually impaired to enhance their mobility, independence and quality of life. Our guest speakers will be Jim Platzer, the Philanthropy Director at the Leader Dogs for the Blind, and Robert E. Kass, J.D., who will speak on estate planning for pet owners.

I want to thank Brad Kreiner, CFP®, AEP® who graciously volunteered to organize and orchestrate this year's Charity Golf Outing. It is Brad's undying commitment to the Council, both as past President and now as the Golf Chairman, which sets him apart as a true professional and humanitarian. Brad is an authentic example of what the Council is all about: commitment, dedication and integrity to the community. And a specific heartfelt thanks to Kris Wolfe, the Council's Administrator, who without her tireless dedication and efforts, the Council's events would be not possible. Finally, a grand hand of applause for the countless volunteers who make our Annual Charity Golf Outing better every year; the Council sincerely thanks you.

Abraham Lincoln once wrote that "the best thing about the future is that it comes one day at a time," and as these days do come, please remember the value

and commitment the Council offers to our community and to you. Whether it is the professional camaraderie we share at our Membership Meetings, or the charitable commitment our 7<sup>th</sup> Annual Charity Golf Outing demonstrates, we are all here to help, support, and serve each other and our community.

With that being said, I encourage all of you to join us on May 20<sup>th</sup>, 2013, both at the Annual Charity Golf Outing and the Membership Meeting later that day, to support the Leader Dogs for the Blind and one another. It will be a special evening and another step, albeit, one day at a time, towards our future, with a new beginning of opportunity shared with friends.

*Eric Carver, J.D., LL.M., President* ✦

## WELCOME TO OUR NEW MEMBERS

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The Brownfield Law Firm, PLLC

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**MEMBER MEETING PRECEDED BY THE 7th ANNUAL GOLF OUTING**  
(Please refer to the additional Golf Outing Notice)

**GUEST SPEAKERS:**

**JIM PLATZER, PHILANTHROPY DIRECTOR**



**ROBERT E. KASS, JD**

*Barris, Sott, Denn & Driker, PLLC*

**“Common Mistakes in Estate Planning for Pet Owners”**

**MONDAY, MAY 20, 2013**

Wabeek Country Club  
4000 Clubgate Drive, Bloomfield Hills, MI 48302  
Office: 248-855-0700

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**AGENDA:**                      5:30 p.m.                      Complimentary Cocktails  
                                         6:30 p.m.                      Presentation  
                                         7:30 p.m.                      Dinner

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**NEW FEATURE: Log onto our website by May 13, 2013 to make your reservation and pay with VISA or Master Card. [www.metrodetroitfepc.org](http://www.metrodetroitfepc.org)**

**RESERVATIONS RECEIVED AFTER MAY 10 WILL COST \$85.00 PER PERSON.**

OR PLEASE MAIL YOUR RESERVATION AND CHECK BY MAY 10, 2013 TO:                      COST: \$60.00 PER PERSON  
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Phone: (248) 538-7654 • Fax: (248) 538-7656

MEMBER NAME: \_\_\_\_\_ GUEST NAME: \_\_\_\_\_

TOTAL ENCLOSED: \_\_\_\_\_

FINANCIAL AND ESTATE PLANNING COUNCIL OF METROPOLITAN DETROIT

# 7th ANNUAL CHARITY GOLF OUTING

NET PROCEEDS AND ADDITIONAL CONTRIBUTIONS TO BENEFIT  
LEADER DOGS FOR THE BLIND



## MAY 20, 2013

### WABEEK COUNTRY CLUB

4000 Clubgate Drive, Bloomfield Hills, MI 48302

<http://www.wabeekcc.org/>

**11:15 AM REGISTRATION / 11:45 AM: BOX LUNCH/  
SHOTGUN START 12:00 PM**

**\$150 PER GOLFER  
(SINGLE GOLFERS ARE WELCOME)**

**18 HOLES OF GOLF WITH A CART/DRIVING RANGE  
WARM-UP/UNLIMITED COURSE BEVERAGES**

**\$600 PER FOURSOME**

**4-PERSON SCRAMBLE**

**\$700 FOR A FOURSOME AND A HOLE SPONSOR**

**5:30 PM COCKTAILS**

**\$150 HOLE SPONSOR ONLY**

**6:30 PM ANNUAL MEETING & GUEST SPEAKER**

**ADDITIONAL LEADER DOG DONATIONS:**

**7:30 PM DINNER**

**(\$60.00 COCKTAILS & DINNER ONLY)**

**🐾 \$25.00   🐾 🐾 \$50.00   🐾 🐾 🐾 \$100.00**



**NEW FEATURE: Log onto our website by May 13 to make your reservation and pay with VISA or Master Card.**

[www.metrodetroitfepc.org](http://www.metrodetroitfepc.org)

**OR PLEASE MAIL YOUR RESERVATION AND CHECK BY MAY 13 TO:  
FEPCCMD • 30600 Northwestern Hwy-#208 • Farmington Hills, MI 48334  
Phone: (248) 538-7654 • Fax: (248) 538-7656**

GROUP NAME: \_\_\_\_\_ GROUP CONTACT EMAIL: \_\_\_\_\_

PLAYER #1 \_\_\_\_\_ PHONE \_\_\_\_\_

PLAYER #2 \_\_\_\_\_ PHONE \_\_\_\_\_

PLAYER #3 \_\_\_\_\_ PHONE \_\_\_\_\_

PLAYER #4 \_\_\_\_\_ PHONE \_\_\_\_\_

YES I WANT TO SPONSOR A HOLE: \_\_\_\_\_

CHECK ENCLOSED: \_\_\_\_\_



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## **Cleaning Up From the 2012 Crunch: Best Practices for 2013**

*Holly Isdale*

For most attorneys and advisors, the fourth quarter of 2012 became rather crazy, especially in its final weeks as clients finally “got serious” about planning and new trusts were being created and funded almost daily. Now that the dust has settled, what should practitioners do in 2013 to make sure that these trusts are appropriately managed going forward?

### **Communicate**

First off, it is important to take time to clearly communicate with clients the steps that were taken in late 2012 to fund trusts or to make gifts. This year in particular, with the rush to get trusts funded, many settlors may not have fully understood the implications of the trust being created or the limitations placed on the assets going forward. As we know, it can take several meetings before the basic terms and esoteric provisions of trusts are fully understood. Over the years, I have had hundreds of clients in my offices offering up their estate or trust documents and saying that they do not understand the terms or, worse, being surprised when limitations arise under the trust documents. Long summaries of document terms and provisions often end up stored in the envelopes they were mailed in and the clients do not understand the nuances of the structures created. Pictures, diagrams (with at least size 12 font for our aging eyes!) and conversations are the best way to ensure that there is an understanding of the trust structures.

### **Clarify**

With any sophisticated estate plan or trust structure, the details matter. It is important that your clients understand the ongoing requirements for “care and feeding” of a strategy. Are there Crummey notices to be made? How often are the insurance policies to be reviewed? Who is responsible for making annuity payments from a GRAT? Who calculates and distributes income from a trust with mandatory distribution provisions? What discussions need to occur with beneficiaries?

### **Coordinate**

I remember attending a panel discussion of business owners who had sold their businesses. All of them lamented the lack of integration among advisors and the

structure of various business models (billable hours being the main culprit) that seemed to dissuade attorneys and other advisors from being as proactive with advice and education as these clients would have liked.

In an effort to foster better coordination among advisors and to ensure that the trusts created are successful, here are a few “next steps” to take now that the rush to fund the trusts has subsided.

#### **1. Establish clear investment policy guidelines.**

While most investment firms require, as part of their account documentation, a statement of the investment goals for the account, this is not sufficient for trust operations. A well drafted investment policy statement, with asset class guidelines and risk parameters, should be drafted for every trust. The investment policy statement should also contain a summary of the trustees’ view on investing for the account, whether relying on active or passive managers, expectations for performance and fees as well as providing a protocol for the review and amendment of the policy statement. Copies of the investment policy guidelines should be reviewed with the beneficiaries at the annual meeting, particularly if the trust was designed to hold concentrated positions or illiquid assets, both to protect the trustees as well as to ensure that the beneficiaries understand the risks inherent in the portfolio and can take steps to address liquidity constraints in their personal investments.

The act of creating investment policy guidelines for the trust can provide clarity as to the amount of income expected from trust investments. Where trust income is expected to be consumed by the beneficiaries, the trustee should also review the ability under state law to allocate between principal and income and the impact of distributing principal on the investment portfolio. Documenting at inception the goals for the trust and the plan for allocating principal and income, particularly if there is an expectation that principal will be taken out of the trust only in certain circumstances, can provide clarity to the beneficiaries as to future cash flows as well as to the investment team to build a proper asset allocation for the portfolio.

As part of this investment discussion, clients may need to be educated on how the investment structure for their assets will change now that the assets

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are in trust. Even if the asset allocation remains unchanged, the trustees' liability for oversight of trust assets requires proper supervision and documentation of the assets.

## **2. Document the plans created.**

It is important to have both formal, and comprehensible, summaries of the trusts created and the future planning opportunities discussed as part of the trust creation. This is also a good time to review the use of side letters with clients and allow them to document their intent in their own words, emphasizing that these letters are not legally binding but can provide guidance to the trustees on the operation of trusts. For those who created long dated trusts, questions to consider include the desire to benefit those closer in lineage to the grantor or to operate the trust in a way to maximize the return to future generations. When and how might the trustees decide to dissolve the trusts? What behaviors or concerns are paramount to the grantor in designing the trust and in the future administration of trust assets? Writing these down while the plan is "fresh" in everyone's collective memory can help to ensure that the trust meets its objectives.

If your clients' selected grantor trust status for the trusts created in 2012, make sure the trustees and settlor understand the tax implications of the trust and that the accountant is aware of the trust for reporting purposes. In particular, document carefully the manner in which the grantor status may be "turned off" by the settlor. Likewise, document any planning techniques considered when creating the grantor trust (such as subsequent sales of assets or exercise of the power of substitution) and share the strategies with the rest of the client's advisors to ensure everyone is aware of further gifting opportunities with the trust. Finally, with higher expected income tax rates, the continued liability for taxes on trust assets could be a rude awakening for some grantors.

## **3. Invest in Trustee Education.**

Individual trustees should be well educated in the scope of their duties and obligations in the role as trustee. For many, this education will include clarifying the obligations to provide a basic housekeeping or administrative tasks for trust operations (mailing of Crummey notices, proper funding and timelines

for insurance trusts, copies of investment statements and proper trading authorizations) while other trustees will need to have more sophisticated techniques documented for their files. All trustees should be aware of the heightened need for recordkeeping and should be encouraged to obtain insurance that covers their liability as trustees. Where the trustee is likely to be unable to meet the administrative duties, it is worthwhile to explore "agent for trustee" services offered by most of the major financial institutions. For a reasonable fee, the trustees can be assured that the trust will be run appropriately while the settlors and beneficiaries can feel confident that the individuals chosen are receiving the appropriate support.

## **4. Determine operational responsibilities.**

It is important to list out all the tasks associated with the trust operations and make sure that someone is responsible for every task. For example, trusts requiring mandatory distributions, either annually or at specific ages, will need to have someone responsible to calculate and execute on the distributions. If there is no corporate trustee in place, either as a full fiduciary or as "agent for trustee," this task usually falls to the attorney or accountant. Make sure the individual trustees understand what obligations they may have to oversee other advisors and that alerts are properly calendared on multiple systems.

## **5. Ensure all gift tax returns are properly filed, with valuations attached as needed to ensure proper disclosure.**

There does not seem to be any hard or fast rule as to who should file the gift tax return and, in my experience, it distributes fairly evenly between the drafting attorney taking responsibility and the client's accountant. If it is not the drafting attorney, be sure that the accountant (or whomever is responsible) knows the gift occurred, understands the structure and any specific reporting obligations and has copies of all relevant valuation information necessary to substantiate the returns if questioned. As many clients routinely file extensions, the gift tax returns are unlikely to be filed for several months and last minute gifts may be forgotten. Hopefully, all parties had sufficient time before the gifts were made in 2012 to account for gifts made earlier in the year and to do proper calculations. As we all have had the "forgot-

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ten” gift appear when the accountant begins to collect the supporting documentation for income and gift tax returns, plan to review the gift tax returns with the client to ensure that any taxes due, if above available exemption, are paid at this time.

#### **6. Clarify whether notifications have to be made to beneficiaries of the trust and at what time.**

State laws vary as to when and how notifications have to be made to beneficiaries of trusts. It is important to review the notification requirements applicable to your trust with your clients and ensure that they are aware of their obligations. Many clients prefer to have their other advisors participate in these discussions, either at the time of the notification, or shortly thereafter, to walk the beneficiaries through the terms of the trust or to help them understand the implications of investment decisions in trust assets.

#### **7. Review bank accounts to confirm proper set up and titling of assets.**

In the rush to create trusts in the final weeks of the year, many clients were opening accounts with little time to fully review and communicate the operational aspects of the trust. It is worthwhile to review the account documentation with the trustees to ensure that the account structure matches the needs of the trust. Some attorneys prefer that ILITs hold non-interest bearing checking accounts so the automatic sweep function of the account may need to be affirmatively turned off. Likewise, this is a good time to review what trading permissions are on the accounts, who is receiving duplicate account statements and make sure that all relevant parties have the appropriate contact information and wiring instructions for funds transfers as needed. It is also a good time to review the status of the trust as a qualified purchaser or accredited investor with the settlor, the trustees and/or the beneficiaries. Many times an investor is surprised to learn that investments they are able to do personally are not available to trusts because of higher asset value limits for these entities.

#### **8. Pay attention to Record Keeping.**

Carefully walk your clients through the requirements for maintaining proper books and records for the entity chosen and identify who is responsible for the upkeep of these records. For trusts, this can include

the usual documentation (accounts statements, trust documents, Crummey notices and waivers, payment authorizations etc.) but should also contain records of communications with beneficiaries, investment policy guidelines and of course, all tax documents. For partnerships, ensure that the client understands the need for regular meetings and maintenance of proper formalities in running a business. Expand the discussions to include accountants and investment professionals here to ensure that authorizations for trading and investments reflect the partnership structure and that proper communication of all relevant information is going to the right parties. For foundations, the basic requirement to maintain books and records should include the formal meeting minutes as well as documentation of grants made, publication requirements depending on state jurisdictional requirements, as well as the creation and adherence to formal investment policy guidelines. A good practice to adopt is to schedule a periodic “compliance” discussion with your clients to ensure that the vehicles chosen (partnerships, for example) are being operated in accordance with the ever-changing tax law in the area.

#### **9. Prepare for Audits.**

The IRS’ Global High Wealth Industry audit initiatives and its techniques will expand in the coming years to touch more of our clients and the record-keeping needed to comply with the audits will be far beyond what most families, including family offices, routinely have in place. At a recent CFA Institute of Philadelphia event, Daniel Carmody, Esq., of counsel in the tax department of Morgan Lewis & Bockius provided some great insights into the audit process as well as recordkeeping requirements expected by the audit teams. In particular, some segments of the IRS will now trigger the audit process at as little as \$1 million in annual income and the IRS teams are taking a broad enterprise approach to audits, moving from income tax to gift tax to payroll tax, etc., and requiring very quick turn-rounds on document requests. This focus by the IRS on tax compliance, in their search for more tax revenues, underscores the need for formal protocols for client recordkeeping, both in physical and electronic form. In my work with clients, we routinely pull and scan the client’s files to create electronic summaries of

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important documents as well as formal records to substantiate the proper operation of various entities.

#### 10. What if you or the client feels they made a mistake?

With all the rush to plan and make gifts, I expect there will be some remorse in the New Year when clients realize the implication of gifting assets, especially if tax rules change or income tax rates increase. Every attorney has different provisions in their documents to allow for transfers to new trusts, decanting or termination of trust assets. It is worthwhile to review these with your clients. Likewise, the client should work with their investment advisors to periodically update and review the financial forecasts for the client's remaining assets. If the trust is overfunded, the legal and investment solutions will vary by situation.

#### Conclusion

Every practitioner knows that even the best estate plans can go awry without proper attention to the administrative details. With the rush to transfer assets in 2012, it is possible that clients may not have understood, or perhaps retained, the nuances of the structures that were put in place. In addition to the file memos and notices to clients, take the time to reach out to clients with clear, concise reminders of the steps that need to be taken. If you are able, reach out to their other advisors to ensure that they are aware of the tasks that may fall to them, or clearly communicate to the client the need to transmit information. A few minutes now to get the proper support in place for your structures will ensure a high degree of success for the plan over time.

*Holly Isdale is the founder of Wealthhaven, a consulting firm focused on family business and family office matters. She is a tax attorney by training, with over 20 years of Wall Street experience leading the investment and estate planning teams at several large institutions. Her work with private trust companies includes creation of the entity, establishing ongoing operational and family governance structures and providing administrative and investment oversight.*



## ADDITIONAL NAEPC MEETING OPPORTUNITIES

### 50th Annual Conference Information

*November 20 – 22, 2013*

*The Cosmopolitan of Las Vegas · Las Vegas, Nevada*

Please plan on joining NAEPC & The NAEPC Education Foundation this November in Las Vegas, Nevada. The hosting property, The Cosmopolitan of Las Vegas, is the newest property on the Las Vegas Strip and the annual conference provides the perfect opportunity for just a little extra time away! Plan now to join the celebration of 50 years of exceptional conferences and educational programming!

• **New Benefit** •

**ABA RPTE 24th Annual Spring CLE Symposia**

**May 2-3, 2013**

**Washington, DC**

This year's Symposia will offer an insider's view of the latest planning techniques and developments in both estate planning and real property. Speakers will include not only the nation's leading practitioners and professionals, but also a wide variety of Washington, D.C. insiders including judges, officials from United States government agencies, and U.S. Senate staff from both sides of the aisle who will share their insights on both recent developments and future trends. The Symposia will also offer valuable networking opportunities with attorneys from across the country, including working lunches hosted by substantive committees. Finally, we have planned a variety of social events for your enjoyment during your visit to our nation's capital, highlighted by a private reception on Thursday evening at the National Portrait Gallery. Full program information can be found online by visiting [http://www.americanbar.org/calendar/2013/05/rpte\\_24th\\_annualspringsymposia/general.html](http://www.americanbar.org/calendar/2013/05/rpte_24th_annualspringsymposia/general.html). Download the full brochure at [http://www.americanbar.org/calendar/2013/05/rpte\\_24th\\_annualspringsymposia/brochure.html](http://www.americanbar.org/calendar/2013/05/rpte_24th_annualspringsymposia/brochure.html)

NAEPC members (AEP designees and members of affiliated local councils) who have never attended the RPTE Symposia before may take advantage of a special \$250 discount extended to all first time registrants.!

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website: metrodetroitfepc.org

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