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# Trust UPDATE



October 2013

## What retirees should know about elder law

An AARP study of fraud victims released in 2011 found that their average age was 69. According to the report, older adults are apparently more trusting; they are more open to hearing sales presentations; and they are more likely to accept propositions that should be recognized as too good to be true—guaranteed high investment returns with no risk, for example.

National Public Radio reported on two studies that suggest aging may be associated with a declining ability to pick up on risk cues. When presented with photos of people who have been trustworthy, neutral or untrustworthy, older adults scored the neutral and trustworthy faces the same as younger ones did. However, they also rated the untrustworthy faces as much more trustworthy than did the younger participants. Subsequent tests with brain imaging suggested that the part of the brain that processes risk and danger has relatively lower activity in older adults.

The net result is that retirees may be vulnerable, at a time when financial fraud is a growing problem. They need to keep their guard up, and their family members need to help them do it.

A new specialty in legal practice, “elder law,” has emerged over the past few decades, in part in response to this need. Retirees and senior citizens have some special laws and programs that apply only to them, and the laws that apply to us all may take on a new aspect when applied in the unique circumstances that the elderly face. The core areas for which elder law attorneys provide advice include:

- health and long-term care planning;
- access to public benefits, including Medicare, Medicaid and Social Security;
- surrogate decision-making, including both medical and property management decisions;

- older persons’ legal capacity;
- wills, trusts and estates.

Although any attorney may include elder law advice in his or her practice, some are now becoming specialists in this field, and national organizations have been created for specialist certification. To achieve a specialist designation, an attorney must be able to help with insurance, housing, long-term care, employment and retirement issues.

**Planning for health care needs**

Most retirees will not need to consult an attorney to secure their routine Medicare benefits or Social Security payments. Medicaid benefits are another matter, and they are subject to an array of complex rules that an attorney can help sort through.

*Continued on next page.*



The elder law attorney also should be consulted for drafting a living will, in order to provide guidance on making medical decisions when one is terminally ill. Among the questions to consider before executing a living will:

- How do you feel about ventilators, surgery, drugs or tube feeding if you become terminally ill? If you are unconscious and not likely to awaken? If you become senile?
- What sort of mental, physical or social abilities are important for you to have in order to enjoy living?
- What kind of medical treatment would you want if you had a severe stroke or other medical condition that made you dependent upon others for all your care?

A living will tries to answer such questions. Yet one readily can see that answers are almost impossible. No one can guess what medical emergency might be faced in the future, nor what medical advances might be made in the coming years to deal with it. In fact, some studies have shown that similarly situated patients tend to get the same care whether or not they have living wills.

That's why most experts advise having a *durable power of attorney for health care* in addition to a living will. This document identifies an individual whom you have chosen to make health care decisions on your behalf, when you are unable to make your wishes known. Most importantly, this document provides effective guidance before a diagnosis of terminal illness is made. For example, withholding of nutrition and hydration generally cannot be authorized by a living will, but they can be ordered under a power of attorney for health care.

### Advance financial directives

Getting advance financial directives in place is one sound way to combat potential financial fraud.

The most basic tool for delegating authority to make financial decisions is the *power of attorney*. The power normally is drafted by an attorney, such as an elder law specialist, and the authority that it creates may be as broad or as narrow as needed. However, a traditional power of attorney is effective only so long as the person who created it is competent. Therefore, a *durable power of attorney* may be a better choice, because it continues in force regardless of the competence of the person whose affairs are being managed. In some cases, a power of attorney doesn't become effective until the occurrence of a future event, such as the onset of a disability. Such an approach is called a *springing power of attorney*.

The more comprehensive approach to financial management at the end of life is the *revocable living trust*. Investment assets are placed in the care of a *trustee*, who manages them consistent with the terms laid out in a trust agreement. The trustee may be empowered to handle routine financial chores—paying bills and taxes, for example—as well as the more demanding duties associated with portfolio management.

A living trust provides continuous financial protection in the event that the trust grantor becomes incapacitated. There's no need to involve a court in a public proceeding for a guardianship or conservatorship to handle financial matters.

### Wills and estate planning

Everyone needs a will to provide a plan for the final distribution of his or her property. That is the primary function of a will, together with designating someone or an institution (such as us!) to supervise the process of estate settlement. An estate plan may include trust planning to handle longer-term wealth management issues.

### Are you ready?

We don't practice law, elder law or otherwise. For that, you must seek advice from an attorney. We do provide investment management and trusteeship services. One of today's most cherished luxuries is attentive, personalized service from people who not only know their business but also enjoy helping others. We work hard to provide our living trust customers with that standard of service. You can gauge our capabilities by talking over your own plans with one of our asset managers. Why not make an appointment this month?

## Documents for delegating

Planning at the end of life involves the delegation of various responsibilities to others, who must act on behalf of the one doing the delegating. Here are the types of documents that one may encounter.

Document	What it does
<b>Medical:</b>	
Living will	Provides guidelines for medical decisions when an individual becomes terminally ill.
Do not resuscitate order (DNR)	Specifically requests that cardiopulmonary resuscitation not be used if one's heart or breathing stops.
Power of attorney for health care	Identifies an individual to make medical decisions when one is unconscious or incapacitated.
<b>Financial:</b>	
Power of attorney	Delegates authority to an agent to make financial decisions. The agent's authority ends when the principal is incapacitated.
Durable power of attorney	Delegates financial decision power to an agent even if the principal is incapacitated. In some cases, the power "springs" into being upon incapacity or other identified event.
Revocable living trust	Transfers assets and full financial management authority to a trustee. The trust may continue into incapacity, even beyond the death of the trustor.

Source: M.A. Co.

## Living trust candidates

Any comprehensive review of an older person's financial planning is likely to touch upon the value of a revocable living trust for investment management. The trust approach provides a great tool for delegating investment responsibility into experienced hands without giving up control of assets. Anyone with a substantial portfolio should consider a trust and the benefits of professional trusteeship, such as we provide. Other good candidates for a living trust include those who:

- own assets in more than one state;
- are concerned about financial management upon illness or incapacity;
- value family financial privacy; or
- want to ensure immediate family access to assets after the owner's death.

For a real-life example of family financial privacy, one need look no farther than the will and living trust of actor James Gandolfini, who died suddenly last summer. There was a flurry of speculation when the details of his will were made public, but the talk died down quickly when it was learned that there was much more to Gandolfini's estate plan than first reported—he had trusts in place as well.

Think you might be a candidate for a living trust? Please come in and talk it over with us to learn more. □



## Growth or value?

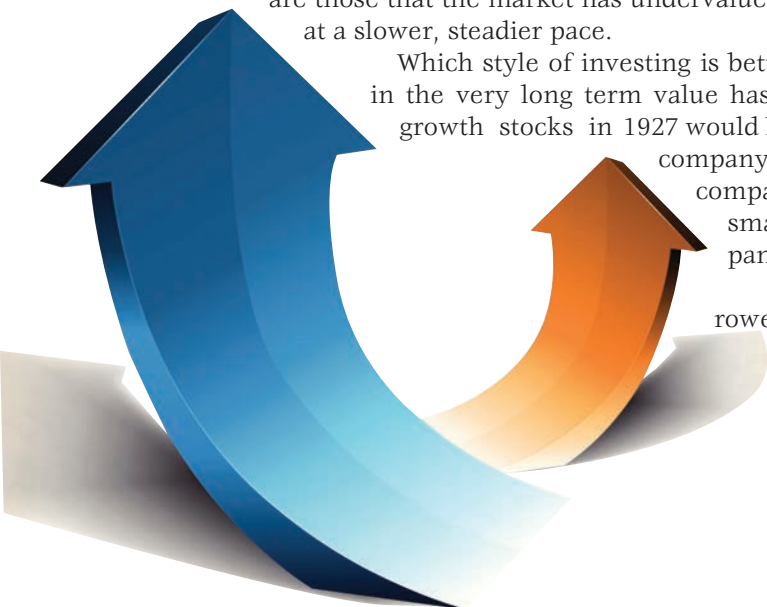
Stock market investors sometimes divide the universe of shares into growth stocks and value stocks. Growth stocks are believed to be poised for dramatic expansion, tend not to pay dividends because funds are being reinvested in the company, and tend to have relatively high price/earnings ratios. Value stocks are those that the market has undervalued. They often *do* pay dividends and run the economic race at a slower, steadier pace.

Which style of investing is better? According to the *Ibbotson SBBI 2013 Classic Yearbook*, in the very long term value has far outperformed growth. \$1 invested in large-company growth stocks in 1927 would have grown to \$1,295 by the end of 2012. Investing in large-company value stocks, it would have grown to \$7,004. For small-company stocks, the difference was even more stark: \$1,622 for small-company growth, an astounding \$65,874 for small-company value.

However, over the last ten years, the differences have narrowed, as shown in the table below.

Compound annual rate of return, 2003-2012		
	Growth	Value
Large companies	7.3%	7.1%
Small companies	9.2%	12.8%

Source: M.A. Co.; Data: *Ibbotson SBBI 2013 Classic Yearbook*



## The philanthropreneurs

What do you get when you cross an entrepreneur with a philanthropist? A “philanthropreneur.” Philanthropreneurs have made news lately. Jeff Bezos of Amazon.com bought *The Washington Post*; Red Sox owner Paul Henry agreed to nurture *The Boston Globe*; and hedge-fund tycoon John A. Paulson rescued the venerable Steinway piano company. Their common goal: preservation and enhancement of organizations that they believe contribute more to society than they are likely to earn in profits.

A pioneer philanthropreneur was actor Paul Newman. A generation ago he began to market a commercial version of his home-made salad dressing, pledging to give away all profits. Now vastly expanded, Newman's Own food company has generated hundreds of millions of dollars for charity.

For those who are charitably inclined but whose wealth isn't of so great a magnitude, a charitable trust may be a good alternative to explore, especially by those who own appreciated assets. A charitable deduction will be based upon the full market value of the property donated to the trust, without diminution for taxes on capital gains. The donor may reserve income from the trust for life, or for joint lives in the case of a couple. That reduces the value of the income tax deduction. Here are three fictitious examples.

**The software executives.** Jack and Jill worked for a software start-up, and they received a series of stock options. The value of the shares took off. After 20 years they created a charitable remainder unitrust for the shares, naming their alma mater as final beneficiary. The trustee sold the shares, investing the full value of the proceeds in a diversified investment portfolio. The couple will receive 6% of the value of the trust assets each year for the rest of their lives. The cash flow is enough to permit them to start new careers—in politics!

**The retiree.** Norman reached age 65 with a stock portfolio and an IRA worth \$100,000. He wanted to convert to a Roth IRA but was concerned about the tax cost. Solution: create a charitable remainder annuity trust, donating appreciated stocks to the trust. The charitable deduction from that transaction will help offset the one-time taxes on the Roth conversion. Norman has been a lifelong member of and volunteer at a local museum, so he named it as his remainder beneficiary. He also reserved for himself a 5% annuity from the trust, to be paid for the rest of his life.

**The heir.** Marge was financially well settled when she inherited a beachfront house from her uncle. She didn't need another house. Marge arranged for a charitable remainder trust to take title to the beach house and sell it. The trust will pay income to her, and at her death the remaining assets will pass to her church.

To learn more about how a charitable trust may benefit you and your family, talk with your tax advisor soon. □



## Does your parent or spouse show signs of dementia?

The financial impact of dementia can be almost as devastating as the disease itself. Thoughtful trust planning can be part of the solution. With a living trust, we provide continued financial management in the event of incapacity.

When you have uncommon financial planning concerns, please turn to us for answers.



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