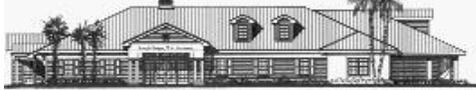


Joseph C. Kempe
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The hiring of a lawyer is an important decision that should not be based solely upon advertisements. Before you select an attorney, ask them to send you free written information about their qualifications and experience.

FAMA AND FRENCH ON INVESTMENT AND MARKETS
 - BEHAVIORAL ECONOMICS AND ASSET ALLOCATION -

Fama (Prof., U. of Chicago's Booth) and French (Prof., Dartmouth's Tuck) are top proponents of what is known as the "efficient-market theory," a theory that won Fama the Nobel Prize in 1965. The efficient market theory is a proposition that the prices of stocks, bonds, and other securities fully reflect all available information at any point in time. This is said to be the result of profit-maximizing investors painstakingly searching for information and using what

See FAMA AND FRENCH: INVESTING page 10

RESURGENCE OF ASSET PROTECTION TRUSTS
 - DAPTS FADE WHILE OFFSHORE TRUSTS GAIN GREATER IMPORTANCE -

Asset protection is an important component of Wealth Management, no matter what that level of wealth. Most states offer various statutory means of protecting one's wealth, with close to full protection often available for married couples in states like Florida. Many states have expanded their trust laws to promote domestic asset protection trusts ("DAPTs"). DAPTs are designed to protect the assets of single individuals or married couples, where protection is otherwise not available. These

See ASSET PROTECTION TRUSTS on page 14

NEW FLORIDA RESIDENTS: DOMICILE AND RESIDENCY
 - IT ISN'T JUST ABOUT TIME, BUT SPACE MATTERS TOO -

New Floridians in 2013 surpassed estimates by a threefold margin, rising from a projected 171,000 to an actual 537,000. NPR and the AP recently reported that in 2014 Florida will surpass New York as the third most populous state. The increase was driven by tax savings, weather, and lifestyle. Not just coincidentally, many Northern states have increased their income and

See FLORIDA RESIDENCY on page 15

BENEFITING FROM A TENANCY BY THE ENTIRETIES TRUST
 - ANOTHER FOCUS ON JOINT TRUSTS -

Our Fall 2013 Client Update featured an article on Joint Trusts, which focused on why the increase of the estate tax exemption to \$5.25 million (\$5.34 in 2014) has simplified estate planning, particularly if clients elect to use joint trusts, rather than a husband and wife each having separate trusts. This article focuses on a kind of Joint Trust known as a tenancy by the entireties trust ("T&E Trust"). Under Florida and many other state laws, joint property held between a husband and wife as tenancy by

See TENANCY BY THE ENTIRETIES TRUSTS page 7

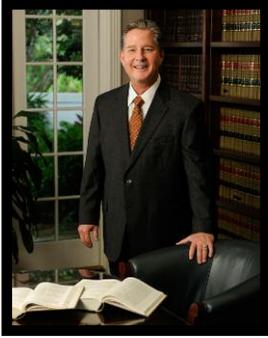
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NEW FOCUSES, NEW RESIDENTS, AND FLORIDA SHINES
- FLORIDA RESIDENCY AND WEALTH MANAGEMENT AND PROTECTION -



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Chair, Florida Bar Tax Section,
Estate and Gift Tax Committee (1993-1997)

Member, Florida Bar, Tax Law Certification
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Board Certified, Tax Law
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University of Miami (1983)

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Florida has become a target for new residents, both domestically and internationally. New residents migrating to Florida during 2013 trounced projections. Primary reasons include climate, but more importantly an absence of, and constitutional ban on, income and estate taxes. A rebounding economy, an upturn in property values, no hurricanes, and low interest rates present a confluence of factors causing people to jump at the opportunity to make Florida home. Florida is a jurisdiction of choice for life and property management. The mixed bag of people desiring legal counsel on establishing domicile and reducing state, federal, and international taxation, is complimented by an increasing desire of individuals to protect the wealth they have accumulated during their lives and as it passes on to their heirs. Florida offers a variety of laws and access to others that make it a particularly attractive jurisdiction of choice for asset protection.

Asset protection trumps taxes in the context of wealth management. Taxes are marginal, but liability risk can result in a total loss. How assets are titled is often decided after considering a variety of factors, including probate and guardianship avoidance; taxation at the state, federal, and international levels; and protection against loss as a result of liability risk. **How an asset is titled and passed to heirs may completely avoid probate and guardianship, avoid all sources of taxation, and be free from liability risk, or the complete opposite can be true.**

Historically, estate planning was somewhat universal, because the estate tax exemption was so low and the estate tax was so high (as high as 60%). Avoiding the estate tax at all costs was the priority of most estate plans, and those plans took certain customary forms. Income tax was a minimal consideration given the high estate tax. With the increase of the estate tax exemption, lowering of the estate tax to

40%, increase of the federal income tax to levels above the estate tax, and significant differences in state income and death tax regimes, planning has become less customary and more complicated. In many cases, planning has been turned on its head and income tax planning within the context of estate planning has attained priority. Which tax should have priority may, however, be fleeting and proper planning requires flexibility. Furthermore, exposure to state death and income taxes is increasing and state taxes associated with non-Florida income sources, non-Florida property, and the domicile of children outside of Florida must all be factored into the planning, while providing flexibility in order to address priorities over a fluid course of time.

Investment management is a subpart of overall wealth management. Investment management is and should be shaped by investment policy, and we again explore what the respected academics are saying these days about passive versus active management styles. We also address what the economic signals are saying about the health of our economy, and how published numbers may be misleading and may have an adverse affect on our investment markets.

We wish you the best of health and prosperity during 2014. If you have any questions or comments, we hope you will call. God Bless!

Joe Kempe



THE NEW NAME OF THE GAME: "PROACTIVE TAX BASIS MANAGEMENT"

- "CREATING" BASIS TO AVOID CAPITAL GAINS -

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Much of Fiscal Cliff #1 planning was no different than any previously pursued to reduce estate taxes: plan to reduce the size of the estate by shifting wealth (in protective trust form) to junior family members, with secondary regard given to the cost basis of assets transferred. (When gifts are made, existing cost basis and unrealized gains carry over to the donee. If instead of gifting the property it were held until death, the basis would be stepped-up to date of death value.) However, if the planning was thought-out well, ways of reversing the transaction(s) were included within the documentation to hedge against unknown future events: the estate tax exemption didn't go down, it actually went up, causing a potential tax detriment (all things being equal) in shifting

the existing cost basis and all past and future unrealized capital gains to junior family members. The name of the game now is management of tax basis and using proven strategies that offer flexibility, as priorities change.

Good estate planning will provide the means to change the priorities between estate exclusion of property where there is an estate tax reduction priority, to a tax basis priority where estate inclusion (and a date of death asset value step-up in basis) is the priority. Estate inclusion is now the priority for all family wealth that is not now or projected to be subject to federal (and sometimes state) death taxes. How is this done? There are generally three methods of achieving flexibility that permits priorities to be

See TAX BASIS MANAGEMENT page 6

NEW AND REPEAT ESTATE TAX REFORM PROPOSALS FOR 2014

- SOME ADMINISTRATION SURPRISES IN THE GREENBOOK -

Annually, the Treasury Department issues the Greenbook, which is the Administration's recommendation for tax reform. This note describes the 2014 proposals suggested by Treasury aimed at curtailing commonly used estate tax planning techniques. At the outset, however, it is surprising to point out that for the first time during the Obama Administration, the proposals do not seek to limit valuation discounts commonly obtained to reduce estate and gift tax through the use of family limited partnerships and other family controlled entities.

Some earlier proposals have been modified, including a proposal to restore the estate tax system that existed in 2009, which would increase the estate tax rate to 45% from its current 40% and decrease the present \$5.34 million estate and generation skipping tax exemptions to \$3.5 million. The gift tax exemption would be reduced from its current \$5.34 million level to \$1 million. These proposals are the largest revenue raisers and are projected to raise \$71.693 billion between 2018 and 2023. These proposals are not intended to be

effective until 2018.

Repeat proposals include those aimed at requiring consistency between estate tax values and the basis used by heirs to compute capital gain in the future; eliminating short term GRATs; reducing the duration of generation skipping tax exempt trusts to 90 years; requiring estate inclusion of assets transferred to grantor trusts that are disregarded for income tax purposes; elimination of deductions for conservation easements over golf courses; and certain others.

The most significant new proposals are aimed at retirement plans. The first is intended to limit "stretch IRAs," by prohibiting distributions over the lifetime of the designated beneficiary. (Note: it is often very important to properly integrate retirement plans with trusts for surviving spouses, children, and grandchildren to gain various advantages, including lifetime payout.) This proposal would require complete payout within no more than 5 years for non-spouse beneficiaries. An exception applies for certain disabled or chronically ill non-spouses.

See 2014 TAX REFORM PROPOSALS page 13

Plan of Care

A Plan of Care is a holistic appraisal of a person's particular situation taking into account current health, physical environment, particular needs, working diagnosis (if any), and anticipated future. It can and often does involve both legal and medical issues. It should ask three questions: where are you now, where are you going, and how this should be accomplished. Obviously, as the goals of care change, the method of approach also changes. The most important feature in a Plan of Care is maximizing and maintaining a person's quality of life for as long as possible. When that goal is no longer viable, the goal changes to helping the person and their family through the dying process in such a way that the person's dignity and pain are adequately addressed and the family unit is supported.



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REGISTERED NURSE
HEALTH CARE ADVOCACY
BIOETHICS LAW
DEATH WITH DIGNITY

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ATTORNEYS AND COUNSELORS AT LAW

BENEFITING FAMILIES WITH DISABLED CHILDREN **- WILL THE INSURANCE COMPANY PAY FOR THE POOL -**

Having a child or grandchild with a moderate or severe disability can be a frustrating and an emotionally draining experience. Family members may feel paralyzed to do anything of true substance. After all, babysitting can be overwhelming or geographically impossible. You call, you worry, and you ponder. "What can I do?"

One way family members can help is by providing a swimming pool or by suggesting that the applicable insurance company may be required to pay for a pool. Many children with disability diagnoses require exercise, which only a family pool can realistically provide.

There are a few prerequisites:

The child must have a diagnosis of a recognized disability, such as a neural tube malformation, as occurs with Spina Bifida or Down's Syndrome, or any

major disability where either the threat of muscle wasting or underdevelopment exists, or childhood obesity due to lack of gross motor activity where it is both real and extremely detrimental to the child's future health. The treating physician can write a prescription stating the pool is medically necessary to maintain the disability at its current level or to enhance the prognosis through muscle development or prevention of obesity. The pool can be designed and constructed to accommodate the child (wheelchair accessible, grip bars, etc.).

Not only do you have the satisfaction of having provided important and wonderful help, in many instances the cost incurred is tax deductible or paid by an insurance company.

Please call if you feel our Health Care Advocacy department can be of assistance.



ADVANTAGES OF FAMILY OFFICE SERVICES **- SINGLE SOURCE REPRESENTATION WITHOUT CONFLICTS -**

From a basic viewpoint, the main advantages are making sure all legal, tax, financial, and accounting are properly synchronized and working toward common goals. More subtle benefits are the facilitation of inter-generational transfers of wealth and reduction of intra-family disputes. Proper management of family wealth can be a complex task, and often our review of existing circumstances reveals not only dysfunction in "paperwork," but tensions bred by distrust of the varying relationships that exist within families.

Proper use of our Family Office Services can assure tax compliance is consistent with legal documents; that investment policies are being followed by investment advisors and money managers, and that their performance is properly benchmarked; that there is a separation between business and personal wealth management; and that reporting of performance and cash flow management is disseminated amongst the family, or to just a few within the family. These and other services are often extended to

varying generations within the family to take advantage of economies of scale, or provided only to the senior family members who desire to keep their privacy and maintain their independence, without burdening junior family members. For example, it is common for us to serve as health care advocate and attorney in dealing with hospitals, assisted living facilities, and with physicians and to report conditions to family members who are living up North or in foreign countries.

Our role is to represent our client as attorney through the provision of Family Office Services, free of conflicts of interest. Unlike other family offices, we do not sell investments or act as an investment advisor. We represent you and monitor your relationship with money managers and investment advisors. If you have any question concerning these services and its cost, please feel free to call for a courtesy review of your circumstances.



**Banks:
7 Upgraded
4 Downgraded**

Bank	Rating
Bank of America	C- ↓
Bank of NY Mellon	C+ ↑
Bank United	A- —
BB&T	C+ —
Bessemer Trust	A- —
Citibank NA	B- —
Deutsche Bank and Trust	A- —
Enterprise National Bank	B- ↑
First Citizens Bank & Trust	B+ ↑
Goldman Sachs Bank USA	A- —
Grand Bank and Trust	D- ↑
Gulfstream Business Bank	B- —
Haverford Trust	A ↑
JP Morgan Chase NA	D+ ↓
Morgan Stanley Bank NA	A- —
Northern Trust NA	B- —
Sabadell United Bank	B- —
Scottrade Bank	C+ —
Seacoast NB	C ↑
Stonegate Bank	A- ↑
TD Bank NA	C —
TIAA-CREF Trust Co	C —
UBS Bank USA	B+ —
Wells Fargo Bank NA	C- ↓
Wilmington Trust Co.	C+ ↓

Source: Weiss Ratings as of January, 2014. Please note that other rating organizations may have higher or lower ratings for these institutions and that these ratings may have changed.



AARON M. FLOOD
ECONOMIC ANALYST
ADVENT AXYS ANALYST

PORTABILITY: A CONTINUING TRAP FOR THE UNWARY
- INCREASED ESTATE TAX EXEMPTION BREEDS MISTAKEN COMPLACENCY -

Portability is the ability of one spouse to transfer to the survivor their unused estate and gift tax exemption, but not their generation-skipping tax (“GST”) exemption. As we have written since the enactment of this law in 2010, portability is not something to use without careful thought. In general, we do not recommend that it be relied upon by most of our clients. The reasons: (1) it is only beneficial for estates that are under the combined taxing threshold of both spouses (\$10.68 million in 2014); and (2) when the estate is under this threshold, the estate is not expected to grow in excess of \$10.68 million between the death of the first spouse and surviving spouse; and (3) it shouldn’t be relied on where there is a desire to protect wealth passing to the surviving spouse from subsequent remarriage

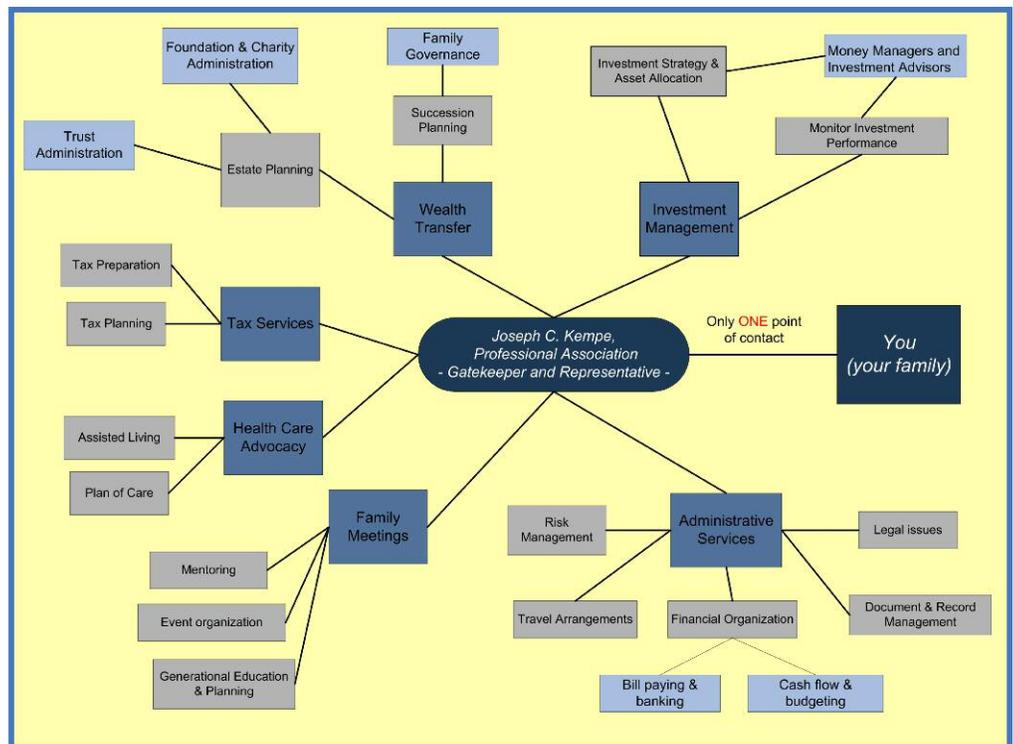
and divorce risk or third party liability risk; and (4) it shouldn’t be relied on where the spouses don’t want to waste their GST exemptions (which is rare); and (5) electing portability requires the filing of an expensive estate tax return, that is otherwise unnecessary if the estate of the first spouse to die is under the estate tax threshold, which it must be in any event for portability to apply. As a result of advisor complacency caused by the enactment of this law, there are other traps.

Complacency can lead younger clients (lets say, those under 75), who have multimillion estates but that are under the taxing threshold, to assume they will not be subject to the estate tax. For example, a 75 year old couple with a \$5

See PORTABILITY TRAP page 12

FAMILY OFFICE SERVICES

-DEMAND INCREASING FOR OUR FAMILY OFFICE SERVICES -



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JUPITER STUART VERO BEACH

7520 Rate History

	2014	2013	2012	2011
Jan	2.2	1.0	1.4	2.4
Feb		1.2	1.4	2.8
Mar		1.4	1.4	3.0
Apr		1.4	1.4	3.0
May		1.2	1.6	3.0
June		1.2	1.2	2.8
July		1.4	1.2	2.4
Aug		2.0	1.0	2.2
Sept		2.0	1.0	2.0
Oct		2.4	1.2	1.4
Nov		2.0	1.0	1.4
Dec		2.0	1.2	1.6

Use of the 7520 rate is required in many estate tax planning strategies. Generally, the lower the rate the better. Those that acted in the second half of 2012 and early 2013 benefited.



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TAX BASIS MANAGEMENT

(continued from page 3)

toggled on and off. One of the primary methods is to provide a general power of appointment to beneficiaries, but only when appropriate. If a senior family member dies possessing a general power of appointment to appoint trust property to themselves, to their estate, to their creditors, or to creditors of their estate, the trust property is deemed to be owned by them for federal estate tax purposes. Holding a general power of appointment is beneficial when there is a tax basis step-up priority, but not when there is an estate tax avoidance priority. How is this power toggled on if there is a basis step-up priority? The mere possession of a general power of appointment will cause estate tax inclusion so it generally starts with the power being off and toggled on by one of these methods: (a) the power by formula, (b) by modification of the trust to grant the power by agreement of all parties or possible court order, or (c) by providing a third-party trust protector with the power to grant powers. The use of a trust protector is how we addressed the issue in Fiscal Cliff #1 planning, and it is the recommended approach suggested by many practitioners who discussed this issue at the recent 2014 Heckerling Institute on Estate Planning.

Family limited partnerships offer another means of achieving an increase in basis. This method is recognized as the only means of receiving a basis step-up without buying or selling an asset or dying owning one. Most family partnerships have a mix of assets, some appreciated, some depreciated, some with unrealized gains, and some with unrealized losses. The mix of basis of these assets owned by the partnership are reflected in only one outside basis: the basis partners have in their ownership interests or units. If there are low basis,

highly appreciated assets, with large unrealized gains within the partnership, a senior family member could be redeemed out of the partnership at a time of deteriorating health or otherwise when there is a desire to sell the inside assets. As a result of a redemption, the higher basis in the senior family member's partnership units is substituted for that of the low basis assets distributed from the partnership. See Treas. Reg. Section 1.732-1(b). The assets distributed can now be sold with less capital gains tax or held until death to receive a potentially higher step-up in basis. Again, however, this planning must be compared to any potential increase in estate tax caused by substituting assets which aren't susceptible to valuation reduction for estate tax purposes, against maintaining the senior family members units in the partnership, where estate tax valuation reduction can often reduce death taxes as a result of lack of marketability and minority interest (unit) valuation discounts.

The dynamics of estate planning has been made greatly more complicated as a result of the increase of the estate tax exemption, and corresponding increases in federal and state income taxes and state death taxes. Estate plans are no longer as uniform as they use to be, and need to be drafted in light of the need for flexibility in addressing a variety of priorities that can change over time. Proactive tax basis management has become a very important consideration, and one that we have been assisting clients address for many years. Legal, tax, and accounting must be properly integrated and managed to secure optimum results, and our platforms of service provide us with a cost effective means of serving our clients.



CREATING BASIS WITH FAMILY PARTNERSHIPS

- THERE IS ONLY ONE WAY, ABSENT DEATH OR TAXABLE SALE OR EXCHANGE -

Family partnerships offer the only way under the tax laws to avoid or reduce capital gains on the sale of appreciated assets, without dying while owning them. Under various partnership tax laws, low basis assets can be used to redeem a senior family member out of

the partnership and allow his or her higher unit basis to be substituted for that of those assets. Just one other benefit our clients have found in creating and properly managing family partnerships!



**PRIORITY NOW IS NOT TO USE
THE APPLICABLE
EXCLUSION AMOUNT
- MANAGING WISE USE OF YOUR
EXEMPTIONS -**

THE APPLICABLE EXCLUSION AMOUNT (ESTATE TAX EXEMPTION) IS \$5.34 MILLION AND INCREASES ANNUALLY BY COST OF LIVING. AT A LOW 1.5% INCREASE IT WILL BE \$6.24 MILLION IN 2025 AND \$7.33 IF IT INCREASES AT A RATE OF 3%. HISTORICALLY, WE HAVE ALWAYS CAUTIONED OUR CLIENTS AGAINST UNWISE USE OF THE EXEMPTION. WE ALWAYS DESIRE TO LEVERAGE AND MULTIPLY ITS BENEFIT, AND CONTINUE TO RECOMMEND DOING SO WHERE ESTATE TAX EXPOSURE EXISTS. HOWEVER, WHERE ESTATE TAX EXPOSURE DOESN'T EXIST, UNWISE USE MAY WASTE THE ABILITY OF HEIRS TO RECEIVE ASSETS WITH A STEP-UP IN BASIS AND NO UNREALIZED CAPITAL GAIN EXPOSURE. FOR EVERY DOLLAR OF APPLICABLE EXCLUSION AMOUNT USED, THAT ABILITY IS WASTED.



ASHLEY M. SUNDAR, ESQ.
PROBATE LITIGATION
ESTATE ADMINISTRATION

Joseph C. Kempe
PROFESSIONAL ASSOCIATION
ATTORNEYS AND COUNSELORS AT LAW

**WE ARE PLEASED TO ANNOUNCE THAT
CHARLES H. BURNS, ESQUIRE AND
ANDREA L. BLAIR, CP, FCP, HAVE JOINED THE FIRM**



MR. BURNS HAS BEEN A PRACTICING TREASURE COAST ATTORNEY FOR OVER THIRTY YEARS. HIS PRACTICE IS CONCENTRATED IN REAL ESTATE, PROBATE, ESTATE PLANNING, AS WELL AS BUSINESS LAW. MR. BURNS WAS A FOUNDING MEMBER OF THE JUPITER-TEQUESTA HUMANE SOCIETY. IN 1981, HE WAS ELECTED TO THE TOWN COUNCIL IN JUNO BEACH AND SERVED FOR FOURTEEN YEARS. HE PRESIDED OVER MANY LARGE SCALE DEVELOPMENTS WHICH CAME TO THE TOWN FOR ZONING MODIFICATION AND APPROVAL. HE ACQUIRED SIGNIFICANT EXPERIENCE IN THE FUNCTIONING OF MUNICIPAL GOVERNMENTS AND PLANNING AND ZONING BOARDS. HE WAS THE PRINCIPAL DEVELOPER OF SURFSIDE HILLS, A SINGLE FAMILY RESIDENTIAL COMMUNITY IN JUNO BEACH, FLORIDA. HE FOUNDED AND MANAGED ATLANTIC TITLE, INC., IN 1988 THROUGH 2010. ATLANTIC TITLE CLOSED OVER \$1 BILLION IN REAL ESTATE TRANSACTIONS DURING THAT PERIOD OF TIME.



MS. BLAIR IS A GRADUATE OF PACE UNIVERSITY OF WHITE PLAINS, NEW YORK AND IS A NATIONAL AND FLORIDA CERTIFIED AND REGISTERED PARALEGAL. SHE IS PRESENTLY PURSUING AN MBA. HER LEGAL EXPERIENCE BEGAN WITH THE WHITE PLAIN'S FIRM OF BRINTON & JANUARY, WHERE SHE SPENT SEVEN YEARS IN THEIR LITIGATION DEPARTMENT, GAINING SUBSTANTIAL EXPERIENCE IN TRUST AND ESTATE ADMINISTRATION, FAMILY WILL AND TRUST CONFLICTS, AND LITIGATION. IN 1998 SHE JOINED THE TRUST AND ESTATE ADMINISTRATION DEPARTMENT OF THE NATIONAL LAW FIRM OF CUMMINGS & LOCKWOOD, IN GREENWICH, CT. FOR THE PAST SIX YEARS SHE HAS BEEN AN ESTATE ADMINISTRATION PARALEGAL IN THE PALM BEACH GARDENS OFFICE OF MURPHY REID, LLC, WHERE SHE WAS THE SENIOR ESTATE ADMINISTRATION ASSISTANT TO JOHN HARRISON HOUGH, ESQ. WE ARE PLEASED TO HAVE MS. BLAIR JOIN THE FIRM AND OUR ESTATE AND TRUST ADMINISTRATION DEPARTMENT.

TENANCY BY THE ENTIRETIES TRUSTS

(continued from front cover)

the entireties offers asset protection from the claims of creditors against either spouse (but not both). This works well while a husband and wife are alive and do not expose themselves to joint liability. But, what if the husband is a doctor or businessman exposed to various risks and his wife dies? Tenancy by the entireties property passes to the surviving spouse, the husband in our example, now exposing 100% of the couples wealth to risk (and probate), unless he has the time, inclination, and ability to create a DAPT or FAPT or, if asset protection isn't a serious concern, revocable trust. See Resurgence of Asset Protection Trusts on the cover page to understand DAPTs and FAPTs. If, instead, the property were held in a T&E Trust, and the trust were properly drafted, the surviving husband in our exam-

ple would be able to divert the T&E Trust property to a trust for his own benefit, sheltering the T&E Trust property from the claims of creditors, provided that the disclaimer does not render him insolvent.

T&E Trusts can also serve to cause an increase in tax basis ("step-up" to date of death value) on the death of the first spouse, eliminating the inherent unrealized capital gain. In a traditional estate plan, where each spouse owns 50% of a family's wealth, only the assets owned by the first spouse to die or their revocable trust receive a step-up in basis. With a T&E Trust, 100% of the assets of the couple can potentially receive a step-up, if the trust is properly drafted to secure this advantage.



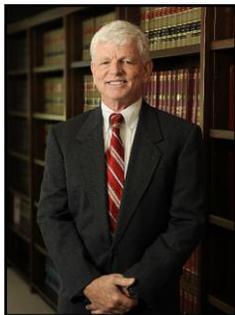
Regrets of High Net Worth Individuals

- 57% wish they would have regularly reviewed their financial plans earlier in life.
- 18% regret they hadn't scrutinized investments.
- 13% regret taking on unnecessary debt.

Wealth Magazine

IRS Budget Slashed

On January 17, 2014, President Obama slashed the IRS budget by 4.4% or \$526 million.



JOHN L. AVERY JR., ESQUIRE
TRIAL AND LITIGATION ATTORNEY
APPELLATE LAW

Joseph C. Kempe
PROFESSIONAL ASSOCIATION
ATTORNEYS AND COUNSELORS AT LAW

INVESTORS OFTEN GET THE LEFTOVERS OF PRIVATE EQUITY AND NEW OFFERINGS

- VALUE OUT OF THIN AIR AND DUE DILIGENCE -

In the late 80's and while at Nixon Hargrave (now Nixon Peabody), I had the opportunity to work with Shearson Lehman Brothers on the feasibility of syndicating the southeast corner of PGA Boulevard and U.S. Highway 1 in North Palm Beach. What was interesting was how the deal was proposed to be priced, with only the projected return necessary to market the securities to the public offered to investors and all excess gain and profit above that retained by the insiders and syndicators as fees and preferred returns. This came to mind recently in representing an old high school classmate in the sale of his business to a private equity firm from Chicago, that was acquiring similar businesses around the country in what are known as rollups. Rollups are eventually sold or offered to the public, generally after approximately 5 years of increasing economies of scale through acquisition of similar businesses. The ability of the private equity firm to create value out of thin air became an interesting process, and one that can be discovered by investors on proper due diligence. In my old classmate's case, he became a willing participant because

the reality of the situation was not against his best interests. How can, and why does, this occur?

Fundamental value (the price that one will pay) is a function of expected streams of cash flow over time, discounted to a present value based upon market rates of return demanded today. If the expected stream of income is \$1 million per year from a target investment and, as an investor, I demand an 8% minimum return on my money, I would be willing to pay \$12.5 million for that investment (\$1 million divided by 8%). Many appraisers use the income approach to value as one of the methods of establishing fair market value. However, there are others, including prior sales of similar investments, which are essentially a reflection of value established by the agreement of a willing buyer and seller. This method is often relied upon more so than others, because it reflects sales by those assumed to be knowledgeable and it is based upon arm's length negotiation and agreement. If there are a sufficient

See PRIVATE EQUITY AND DUE DILIGENCE page 11

THE BENEFITS OF OFFSHORE TITLE

- YACHTS AND AIRCRAFT ROUTINELY TITLED OFFSHORE TO GAIN ADVANTAGES -

Titling large purchase items, such as yachts and aircraft, in offshore jurisdictions like the Cayman Islands can offer many benefits. One of the most touted benefits is avoidance of sales tax and certain documentary taxes associated with the purchase and sale of these large items. For example, properly closing a \$50 million aircraft purchase offshore and outside of U.S. territorial waters, as opposed to in Florida, would reduce closing costs by \$3 million by avoiding the 6% Florida sales tax. The tax is permanently avoided provided the aircraft (or yacht) does not become exposed to the 6% Florida use tax, by staying within Florida for more than transitory periods of time. An additional ben-

efit of titling any type of vessel in the Caymans is the ability to fly the British flag. This allows for expedited customs clearance and freedoms when traveling to another Commonwealth country or the United States, given their close ties with Cayman. There are 18 Commonwealth countries in the Caribbean.

Note: Law student Conner R. Kempe recently undertook studies at the Cayman Island Law School during his Winter break, studying the law of the seas and other current international legal topics. We appreciate his input on this note.



WHAT'S MORNINGSTAR'S DON PHILIPS SAYING

- THE HEAD OF RESEARCH STEPS DOWN -

IN A RECENT BARRON'S INTERVIEW, THE RESEARCH GURU HAD THE FOLLOWING COMMENTS AS HE EXITS THE HEAD OF RESEARCH:

- ETFs ARE PREFERRED BY INVESTORS OVER MORE COMPLICATED AND COSTLY MUTUAL FUNDS.

- THE DEBATE BETWEEN ACTIVE AND PASSIVE INVESTING IS SOFTENING, A BIT.

- THE MATH OF INDEXING IS THAT YOU GIVE UP ANY CHANCE OF BEING IN THE TOP QUARTILE FOR THE ASSURANCE YOU WON'T BE IN THE BOTTOM HALF.

- INDEXING ABSOLUTELY IS A SMART, SAVVY, AND INTELLIGENT WAY TO INVEST, PROVIDED IT IS BROAD-BASED AND LOW COST.

- INVESTORS REMAIN THEIR OWN WORST ENEMY AND CONTINUE TO BUY HIGH AND SELL LOW.

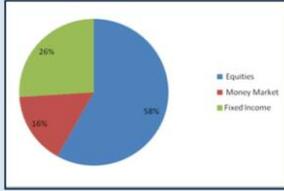
BARRON'S MFQ, A FUND INDUSTRY VET LOOKS TO THE FUTURE, JANUARY 4, 2014.



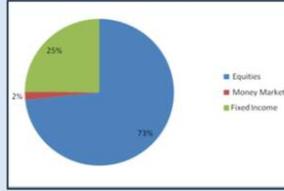
PATRICK E. MANGAN, CPA
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WEALTH MANAGEMENT

Wealth Monitoring Services

Asset Allocation



Yield Distribution



Significant Transactions

JOSEPH C. KEMPE
PROFESSIONAL ASSOCIATION
ATTORNEYS AND COUNSELORS AT LAW

Client Name: Jane Doe

Client #: 999,281

Date: 12/31/2013

Client Snapshot

CURRENT		YTD Investment Performance		FOR PERIOD ENDING 2012	
Total Family Wealth:	\$78,464,000	Portfolio:	12.17%	Total Income:	\$1,184,203
Tax Exempt Trusts & Entities	38,650,000	S&P 500:	29.12%	Adjusted Gross Income:	561,403
Husband Estate Size:	0	Barclays Agg:	(1.47)%	Taxable Income:	476,420
Wife Estate Size:	39,814,000	Performance Since 2011		Tax Free Income:	776,985
Joint Estate Size:	0	Portfolio:	24.98%	Marginal Tax Bracket:	35%
Current Estate Tax:	15,002,000	S&P 500:	49.78%		
Percent of Current Estate:	19%	Barclays Agg:	2.69%		
*Projected Gross Estate:	104,000,000	<small>*Performance through November 2013 on monitored investment accounts.</small>			
*Projected Estate Tax:	18,460,000	<small>The current Estate Tax estimate assumes new law implementing a \$5,250,000 exemption and 40% tax through 2013 and indexed for inflation in later years. We are assuming an inflation rate of 2.5%.</small>			
Percent of Projected Estate:	18%				
Marginal Tax Bracket:	40%				
IRA Portfolio:	509,000				

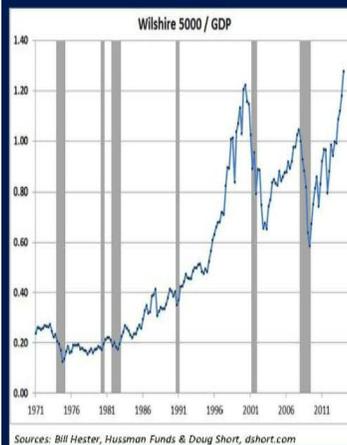
Estate Planning Developments

Reviewed & Current	YES	NO	Miscellaneous
Will:	x		FL 6/14/2018
Trust:	x		QPRT Termination Dates: &2019 &2020
DPOA:	x		Crummey notices verified: Last in 2007
HCP:	x		Family Partnership
Living Will:	x		Records Current? Yes - 2013
IRA Integration:	x		RBD Date: H/W N/A 12/10/05
Recommendations:	Sale to IDIT's		RBD Compliance: N/A Yes
Document Code:	Single 80-20		IP = RBD In Progress 2013 Complete

Legal Developments

Congress appears to be kicking the can down the road with a temporary spending compromise likely to buy time, at least through 2014 midterm elections. Tax reform remains on the horizon, with major reform not likely during 2014. Both isles of Congress seem to recognize that comprehensive reform is needed, but a sluggish economy is still bothersome with unemployment numbers raising statistical questions. The good numbers hide a deteriorating American workforce.

Economic Developments



Observations

The chart to the left suggests that, if GDP for the third and fourth quarter of 2013 is as forecast, the late December equity rally will make the US market, as defined by the very broad Wilshire 5000 Index, the most expensive in history versus the underlying output of the economy (GDP).

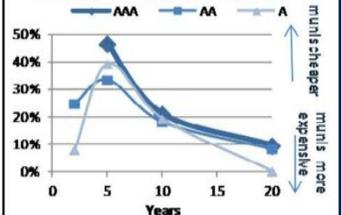
It suggests that the market is as overpriced as it was in 2000, and exceedingly so. Some, however, don't believe the markets necessarily correlate with GDP.

Economic Statistics

	Reported	SGS
Consumer inflation	1.2%	8.8%
Unemployment	7.0%	23.2%
GDP	2.0%	1.7%

Source: BLS, Shadow Government Statistics

Muni-implied Tax Rate[†]



[†] We equate municipal and corporate yields

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ATTORNEYS AND COUNSELORS AT LAW

JUPITER STUART VERO BEACH



**Alignment and Stewardship
of Younger Generations
-Transitioning -**

Shirt sleeves to shirt sleeves in three generations - Family human and financial capital must grow, but too often it deteriorates over time as this proverb reminds us. As Paul Karofsky of Transition Consulting notes, stewardship must lead to alignment of family interests and ultimately the younger generation taking hold, while the older generation lets go. Often this is and should be monitored, so that the success of the transition can be tested. Proper use of family partnerships and family offices can provide the structure to achieve these objectives.



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Recently published employment numbers covering the last quarter of 2013 have been called everything from a farce and phony to a sham and fraud. With stock market values at record highs in relation to domestic gross domestic product ("GDP"), the question is always will the stock market continue to rise. The Willshire 5000 market capitalization to GDP ratio recently signaled a valuation that was determined to surpass that which existed at the height of the year 2000 tech bubble. See Bill Hester, Hussman Funds & Doug Short, dshort.com . Will increases in GDP cause these values to become less frothy?

FAMA AND FRENCH: INVESTING

(continued from cover)

they know, including what they think will happen in the future, when trading securities. I like to say there is a Harvard guy buying and a Dartmouth guy selling, so who is wrong? The answer is it isn't necessarily a right or wrong question, as sales can occur for a variety of reasons that aren't reflecting perceived information and value. Maybe someone is just buying a house and needs some cash or an estate needs to sell assets of a decedent to raise cash to pay estate taxes. These things are difficult to measure with statistical probabilities.

Under efficient market theory, active trading moves prices until the risk-adjusted expected returns are equal for all securities. Further changes are due to events not known beforehand, which are quickly built into prices. In an efficient market investors cannot "beat the market" or find securities that are mispriced such that their portfolios consistently perform better than the market. Since everyone has the same information about a stock, the price of a stock should reflect the knowledge and expectations of all investors. The bottom line is that an investor should not be able to beat the market since there is no way for him/her to know something about a stock that isn't already reflected in the stock's price.

In 1992, Fama and French expanded on

Employment numbers commonly published describe the percentage increase or decrease in employment as a ratio to those in the labor market looking for jobs (known as "U3"). The recent numbers showed a decrease in unemployment from 7.0% in November to 6.7% in December. However, these numbers disguise the fact that new job increases fell short of forecasts by 66%. How can this be? The trick is in recognizing the labor market is shrinking because of people who are disgruntled or just don't want to work, with the labor pool shrinking to a cyclical low of 62.8%. A complimentary study found an interesting trend that causes concern for our country:

See ECONOMIC HEADWINDS on page 13

the efficient market theory as a result of studies that suggested smaller companies, and those which reflected value relative to their market price (lower price earnings ratios, higher book value to market price, etc.), tended to outperform the markets (generate Alpha). This three factor model is used by some advisors to seek Alpha, and involves some active selection apart from buying a market basket of securities. More recently Fama and French have added two additional factors to their theory: profitability and momentum. Momentum strategies are based upon a belief that investors tend to overreact or underreact, which is a matter of behavior. Fama believes the information on any given day is reflected in the price, notwithstanding behavior. French believes that information is not necessarily reflected in the price in the short term and that behavior can cause distortions, that are corrected with time. Yale's Schiller and Princeton's Malkiel tend to support French's view, recognizing that behavior does cause market and investment distortions leading to a less than efficient market and mispricing, but that with time these distortions are corrected. Within this period of distortion, Alpha can be gained because measuring behavioral impact isn't information that can be readily learned and converted into pricing. Other studies

See FAMA AND FRENCH: INVESTING on page 11

PRIVATE EQUITY AND DUE DILIGENCE

(continued from page 8)

Report Finds Immigrant Affluence
- New Americans 33% of the Wealthy -

A BMO Private Bank study has found that one-third of affluent Americans were either born outside the U.S. or are first-generation Americans, with at least one parent born elsewhere. Within this group, 80% reported that their wealth was self-made.

Keep Your Oriental Rugs
- Sotheby's Reports Record Sale -

A 17th-century southeast Persian carpet, likely woven in the city of Kerman, was sold for \$33.7 million, a world record, by a wide margin. It's pre-auction estimate was \$5 to \$7 million.



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GENERAL PRACTICE

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number and frequency of sales, an actual market value may be established, like with real estate sales in a given community.

Let's say, for example, that a private equity firm approaches you about the sale of your business and you think it might be worth as high as \$25 million, but feel its real value is \$15 million and, even though you would agree to just taking that in cash, the private equity firm isn't aware of your true belief in your company's value. In reaction, the private equity firm offers you \$15 million in cash at closing and the remaining \$10 million in subordinated equity, that will be subordinated to the private equity firm's investment and any debt financing used in financing this purchase and future target acquisitions. For simplicity we will assume that the private equity firm and prior target acquisition sellers who, like you, agreed to take some of the purchase price on the sale of their business as a share of the rollup ven-

ture, will own 90% and that you are being offered 10% for the \$10 million of subordinated equity you have agreed to accept. Furthermore, assume that the total capital contributed prior to your contribution of \$10 million is \$40 million. What this reflects by your agreement with the private equity firm is a current rollup value of \$100 million (10% of what, equals \$10 million). By your agreement you are providing the private equity firm with an implicit value of the rollup venture. The private equity firm could take the position that the prior \$40 million of capital has appreciated in value by your agreement to accept 10% of the venture in exchange for \$10 million of your purchase price, even though you would have been happy just taking the \$15 million in cash. Quite possibly, this is value created out of thin air because you didn't really require the extra \$10 million and it can be subordinated to a level where it becomes only a hope and a prayer of real value.

See PRIVATE EQUITY AND DUE DILIGENCE on page 15

FAMA AND FRENCH: INVESTING

(continued from page 10)

have found that the structure of an investment policy, and its asset mix, determines most of the performance in a diversified portfolio. Investors choose asset classes to play different roles in a portfolio, and their appetite for risk guides their asset allocation. Because the asset classes play different roles in a portfolio, the whole is often greater than the sum of its parts.

Active management of rotations into asset classes and sectors using passive baskets of securities is an increasingly popular management style. Passive investing using ETFs and indexes is touted by the above professors as the most cost effective, but with numerous ETFs and indexes to choose from, the management task necessitates some level of active management of portfolios. For example, Princeton's Malkiel, who is often cited by us as a strong advocate of passive investment management using indexes across broad markets, recently was interviewed by Morningstar and appeared to support the notion of some active management, particularly in times of interest rate spikes or troughs.

He also reemphasized the benefits of broad diversification on an international basis. He fears some are now making a mistake, by failing to rebalance to international and emerging market sectors of the World economies at a time when there is enormous pessimism associated with these markets. He also confirmed the merit of Fama and French's modified efficient market theory and the empirical evidence supporting the notion that value and small cap stocks tend to perform better in the long term, but appears to dismiss the merit of momentum investing as being unproven and difficult to measure.

This note is based upon the following research : Two Barron's articles, [A Different Dimension](#) and [Back to School](#), [Fama and French Discuss Their Work](#), (Barron's, Jan. 2014) ; Malkiel, [The Efficient Market Hypothesis and Its Critics](#), (Princeton, 2003) ; Schiller, [From Efficient Markets Theory to Behavioral Finance](#) (Yale, 2003) ; and [Morningstar](#), Malkiel: [Be Careful of the Home-Country Bias](#), (Sept. 3, 2013).



89 Year Old Jean Steinberg
Fights IRS and Wins
- 3 Year Rule Highlighted -

Mrs. Steinberg was a wealthy woman and made a gift to her four daughters of \$71,598,056, which was the value an appraiser determined was the total gifted less the value of an agreement the daughters made to pay any increase in estate tax should she die within 3 years. If she died within 3 years, the \$32,034,311 of gift tax she paid would also be taxed in her estate under Code section 2035(b). The appraiser determined that the value of the daughters agreement was \$5,838,540, resulting in a \$1,804,908 gift tax savings. The IRS argued that the agreement by the daughters wasn't the type of consideration that could reduce the value of the gift because it didn't add value to Mrs. Stenberg's estate. The Tax Court disagreed and ruled in favor of Mrs. Steinberg, and recognized the value of her persistence!



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ESTATES AND TRUSTS
ESTATE ADMINISTRATION

PORTABILITY TRAP

(continued from page 5)

million estate growing at 5% will be worth \$13.27 million over their life expectancy of 17 years. Furthermore, if they have a \$1 million life insurance policy, the policy absorbs \$1 million of exemption and potentially increases the estate tax by \$400,000. (In such a case, the life insurance should be placed in a life insurance trust.) It is important to recognize that the estate tax exemption of the surviving spouse increases by a cost of living index over their life, but the amount transferred under the portability rule does not and becomes fixed on the death of the first spouse.

Those that are uncertain whether to divide their assets using a traditional two trust estate plan, can consider the flexibility of a joint trust which would allow the surviving spouse to make a

decision to rely on portability or to create an exempt, GST sheltered and asset protected trust, over all or part of the total trust fund using a post-death disclaimer. If the trust is properly drafted to provide for a disclaimer formula mechanism to create this post-death exempt trust, a joint trust can provide the best of both worlds for those falling in the middle- having an uncertain potential for an estate tax. Although in many cases a two trust plan will provide more certain protection, joint trusts, drafted to secure tenancy by the entireties protection and estate and GST exempt status, are gaining in popularity, with some states beginning to make them statutory. See, Benefiting from a Tenancy by the Entireties Trust, on the cover page.



NEW FINRA RULES PROTECT INVESTORS

- INVESTMENT ABUSE OF ELDERLY AT THE HEART OF NEW RULES -

FINRA (previously known as the NASD) is the administrative body that regulates broker-dealers and investment advisors. Several new rules issued by FINRA expand the traditional "know your customer" and "suitability" rules, and require that the information gathered to fulfill these responsibilities be maintained in the broker or advisor's records. The broker or advisor has an obligation to have a reasonable basis to believe their investment advice is suitable based upon the information gathered. Under FINRA Rule 2111, the information gathered must include the customer's age, other investments, investment experience, investment time horizon, liquidity needs, and risk tolerance, as well as the customer's financial status, tax status, and investment objectives required under the predecessor NASD Rule 2310.

The new rules and guidance issued by FINRA expand the definition of what an investment strategy encompasses, which must be suitable for the customer.

An investment strategy now includes a recommendation to hold positions and not sell, to purchase on margin, and whether to mortgage a home to secure liquidity for investment. Furthermore, a FINRA member cannot request the disclaimer of any of these responsibilities within its account opening or relation agreements with the customer. This will prevent a broker or advisor from seeking to avoid liability for selling inappropriate investments, by contending that a valid prospectus disclosing the risks was delivered to the customer. This rule addresses a concern involving retired individuals, in search of higher yields in our low interest rate environment, who are offered alternative investments, such as REITS, limited partnerships, and notes not traded on an established securities exchange, which are offered by prospectus or private placement memorandum. Often these investments are highly illiquid, and involve risks not suitable or understood by customers.



ECONOMIC HEADWINDS

(continued from page 10)

IRS Cracks Down on Identity Theft - Refund Fraud Prompts Action -

The IRS has bolstered its Criminal Investigation division and has implemented "fraud filters," designed to catch suspicious returns attempting fraudulent refunds using pirated social security numbers and other information. Victim assistance is now a more streamlined process within the IRS. To start the process, Form 3870, with Identity Theft written as the reason for the proposed adjustment, should be filed with the IRS.



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BUSINESS ACCOUNTING
WEALTH MANAGEMENT

data going back to 1994 shows a steady uptrend in the percentage of young (16 to 24) and prime-age (24-54) Americans not in the labor force, with parallel rises in the number not wanting to work. Furthermore, the number of those out of prime (55-64 year olds) has actually increased, so the unemployed phenomenon isn't a result of the retirement of baby boomers. The Liscio Reports conducted a study and found that the number who wanted jobs "was climbing from late 2007 until the summer of 2012, when it hit 6.9 million. Since then, it's been falling, and is down to 6.1 million, or minus 12%." The effects of this trend present a headwind against which our frothy equity markets must contend.

Unemployment statistics that take into account short term discouraged workers who aren't presently looking for employment is known as U6, and the present U6 unemployment statistic is at 13.1% unemployed- and it hasn't improved. We tend to monitor an independent economic analyst called Shadow Government Statistics. It adds long term discouraged workers to U6, and finds total unemployment at approximately 24%.

A factor contributing to GDP is labor. As such, contribution to goods and services by a shrinking labor market must be overcome by other contributors for GDP to rise. A concern with recent equity valuations is that top line revenue increases aren't the main contributors to recent earnings increases. Reduction of expenses and share reduction through stock buybacks are the main contributors to earnings per share increases. Without top line number increases, there is only so much cost containment that can improve a company's financial con-

dition without it shrinking and earnings falling. Without an expanding economy it is thus difficult for company valuations to increase, and we are at a point where some indicators of value suggest a frothy level. See Hester and Short study, cited above. With decreases in the labor pool, a concern arises over its impact on GDP and whether technology and other efficiencies within corporate America can result in an expansion of GDP. Decreases in labor, however, not only have an output component (supply), but also a demand side (if they aren't working, they don't have money to spend).

Side Note: In bestselling author George Gilder's recent work, Knowledge and Power, Gilder sets forth his thesis that demand side economics will create a stationary state- one could say we have a deteriorating state based upon the above data. Gilder argues Reagan's supply side stimulus is the better approach. In support he uses Qualcomm, Apple, economics, and physics to prove his point: In 2010, companies launched by entrepreneurs and venture capital generated over 20% of America's GDP and 60% of stock market value. In the same year, companies less than five years old created all of the new jobs and older ones actually shed jobs. He suggests government support production of channels for productivity, in simpler forms, and then get out of the way. The Internet is a prime example. He also illustrates a physics conundrum that helped Qualcomm and our broadband communications- sometimes it isn't about pushing, making things faster, and increasing power, but slowing down and finding gaps in those channels that aren't being filled or used.



TAX REFORM

(continued from page 3)

The second proposal is oftentimes viewed as an attack on Mitt Romney's \$120 million IRA. The amount that can be contributed to a retirement plan would be limited to that amount which would provide the maximum annuity permitted for a tax qualified defined benefit

plan. Currently, for a 62 year old, this would amount to approximately \$3.4 million, which is the present value associated with a \$205,000 joint and survivor annuity for a 62 year old couple.



Florida Asset Protection Benefits

-Statutory and Other Protections-

The following reflects some of the protected assets from third part liability risk available to Florida residents under Florida law:

- Homestead
- Life Insurance and Annuities, including intrafamily private annuities
- Wages of a Head of Household (must be minor children)
- Tenancy by the Entireties Property between Husband and Wife
- Assets in spendthrift trusts settled by another
- Charging order limitation against interests in LLC's, LP's, and Family Limited Partnerships

In addition, Florida offers convenient access and facilities to offshore financial centers in Bermuda, the Bahamas, Nevis, the Cayman Islands, Belize, and other jurisdictions, where more sophisticated international asset protection and wealth management is often structured (for Mitt Romney, the Kennedy's, and others), but with financial assets custodied with international banks in more developed jurisdictions.



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ASSET PROTECTION TRUSTS

(continued from cover)

states are enacting these laws in hopes of attracting business for trust companies located in their jurisdictions.

DAPTS are typically modeled after the laws of various foreign jurisdictions, often founded on English laws that have their roots in the Statute of Elizabeth of 1570, on which foreign asset protection trusts ("FAPTs") are based.

Traditionally, FAPTs were used by those who desired to protect their wealth from domestic country risks; i.e., unfavorable domestic laws, like forced heirship; political unrest; confiscation; or wars. Take for example the emergence of private wealth creation in Russia and China, countries whose governments have only recently liberalized social policies to permit individual wealth creation. Many who are accumulating that wealth aren't necessarily trusting their governments to continue on this path of democracy and capitalism and are investing their profits abroad- many doing so within the US, which can be seen locally on the Treasure Coast of Florida. However, prior to becoming U.S. taxpayers they are establishing offshore structures for two primary reasons: (1) to avoid the risk of social and political change in their home countries that could potentially cause confiscation of their new found personal wealth, and (2) to avoid their previously accumulated wealth from becoming exposed to the U.S. income, estate, gift, and generation-skipping tax systems. Only new income and wealth generated as a U.S. taxpayer would become taxable and should be taxable.

Three recent developments have stymied DAPTs and are causing a resurgence of FAPTs: (1) the transparency and legitimacy of offshore banking and custody as a result of the Foreign Account Tax Compliance Act (FATCA),

which requires all U.S. taxpayers to report foreign accounts and certain foreign banks to report the accounts of US taxpayers; (2) the recent Huber bankruptcy decision, which invalidated an Alaska based DAPT (albeit on bad facts, which make bad law); and (3) the Florida Supreme Court decision of Freeman v. First Union National Bank, which declared that an attorney is not liable to a person aggrieved by a client who the attorney assists in creating, and transferring assets to, a FAPT, even if that client was attempting to delay, hinder, or avoid liability to a third party- often referred to as a "fraudulent conveyance" on a creditor. The Court's rationale was that people are free to transfer their assets, but if those transfers are designed to avoid reach by a creditor, use of the fraudulent conveyance laws are only a remedy, and the act itself is not a tort or wrong. It has been recently reported that no creditor has ever reached assets within a FAPT.

FAPTs require knowledge of the jurisdiction of choice and also the structures that are best suited to provide controls and protections, based upon the client's particular circumstances. For example, whether to custody assets in a Swiss bank account or one in the historic banking centers of Andorra, will be dictated on the imminence of threat and the residence of the client seeking protection. There is also particular U.S. and potentially foreign tax reporting. There is generally no U.S. tax advantage to FAPTs and they should be viewed as tax neutral and transparent. We are happy to assist clients with a fuller understanding of FAPTs, DAPTs, and what general asset protection is available to them, which is often constructed within an overall estate plan. 

EB5 VISAS

- U.S. ENCOURAGES FOREIGN INVESTMENT -

Foreign investors who desire permanent U.S. residency and who are willing to invest between \$500,000 and \$1 million in the U.S., in ways that create jobs, are encouraged to contact us about this pro-

gram and immigration assistance. Many programs are available and we are happy to assist with pre-immigration, estate, and international tax planning. 

Illinois Trust Taxation Found
Unconstitutional
-Decanting to [Florida] Trust
Severed Ties -

The Illinois case (Linn v. Dept. of Revenue) really involved decanting to a Texas trust, though we have used this same strategy using Florida trusts and wanted that emphasized. Linn involved a 1961 irrevocable trust created in Illinois that the Illinois Department of Revenue wanted to continue to tax, even though it was modified and decanted to Texas with no longer any ties to Illinois. The 4th District Court of Appeals found continued taxation to be unconstitutional, violating the due process and commerce clauses. Decanting is a form of irrevocable trust modification, that must be done in accordance with certain Federal and State laws and rules.



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JUPITER STUART VERO BEACH

FLORIDA RESIDENCY

(continued from cover)

death taxes, like Minnesota, whose residents were hit with record increases. Nevertheless, as reported in our last Client Update, states like Connecticut, Illinois, Maryland, Massachusetts, New York, etc., are making it more difficult to shake lingering exposure, particularly if proper planning isn't undertaken to avoid continuing reach. All told forty-four states impose an income tax.

Reach can be a function of time and space. For income tax purposes, most states use a 183 days rule, which means that if you are present for more than 183 days a state can assess their income tax against you. Some states will also subject you to their income tax if you are domiciled there. You don't necessarily need to be present in Florida for more than 183 days, just out of the Northern state more than 183 days and domiciled in Florida. For death tax purposes, and some state incomes taxes, time isn't the main factor. Instead, a determination of where your domicile is becomes more important. Domicile is a more subjective question regarding your space. Where is home? Where is the good china, photo albums, and more valuable possessions? Where are your greater and more substantial relationships? Have you transferred the former home to the children, trusts, or offered it for sale? How can you abandon former relationships and gain more in Florida? We commonly assist our clients with these questions and respond to Northern state audit inquiries, as our clients' Florida attorney!

Northern states maintain a stickiness to their former clients in a variety of ways. Old irrevocable trusts that must continue

PRIVATE EQUITY AND DUE DILIGENCE

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Nevertheless, if the venture is successfully sold in the future substantial value may be realized. Recognition of this history would be important for investors evaluating the purchase of the rollup in a private equity purchase or initial public offering.

Proper investment due diligence is critical when evaluating securities not otherwise listed and traded on an established securities exchange or that are newly issued and thinly traded. This is

to be reported to the former state, retention of the former home, income emanating from sources within the Northern state, and even the existence of children in the Northern states are factors that attract lingering tax exposures, but which can often be reduced or avoided with proper planning as a new resident of Florida. For example, many states require that irrevocable trusts created in their jurisdiction continue to report to them, but often these trusts can be modified to cut that tie. See note in left margin. Use of entity structures and gifting techniques can be used to avoid lingering death tax exposures associated with a retained Northern home, particularly recognizing that most states do not impose a gift tax, even though they do have a death tax. Building-in flexibility within Florida estate plans can provide children in Northern states protections and tax reduction mechanisms that are oftentimes omitted and wasted, but can prove to be valuable to the child and grandchildren. See, When Incurring Generation-Skipping Tax Makes Sense, Client Update (Fall 2013).

Florida welcomes new residents but it is viewed as self serving to think the Florida side of things is all that needs to be done. Granted, filing a Declaration of Domicile, IRS Change of Address, and application for Homestead are musts, but alone they won't sway a Northern state revenue officer from seeking back taxes. Proper day counts and proof of the establishment of new ties, and abandonment of old ties, is where the real preparation is achieved, which then can be bolstered by proper overall state and federal estate planning. 

because an active market has not yet established true value. A prospectus will disclose all syndication and other fees, any senior classes of securities or debt to which the securities under consideration are subordinated, and the prior history and terms of target acquisitions in the rollup. Only with proper due diligence can an assessment be made of the risk associated with an investment, its real value, and its prospects for a future gain. 

**THE FAR/BAR CONTRACTS:
-WHICH ONE ARE YOU USING AND DO YOU KNOW WHY? -**



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**REAL ESTATE
SYNDICATION AND
INVESTMENT
- THE REAL ESTATE
MARKET ON THE TREASURE
COAST -**

SINCE THE SPRING OF 2011
WE HAVE WITNESSED A
MARKED INCREASE IN REAL
ESTATE ACTIVITY. BOTH
RESIDENTIAL AND
COMMERCIAL ACTIVITY IS ON
THE RISE, PARTICULARLY
"PRIZE" PROPERTIES!

**AFFILIATED
PERSONAL SERVICE
ORGANIZATIONS**

COUNSELORS TITLE COMPANY, LLC

COUNSELORS REALTY, LLC D/B/A
COASTAL ESTATES

In 1973 the Florida Bar and The Florida Association of Realtors n/k/a Florida Realtors, Inc. ("FRI") established a joint committee consisting of ten attorneys and ten realtors tasked with developing a standard contract for use in residential real estate transactions. Their efforts resulted in what is known as "The FAR/BAR Contract" ("Contract") which has become the standard in Florida for use in residential real estate transactions. Every two to three years the Contract is updated and revised. This contract is not to be confused with the FAR Contract which is a different form produced by the FRI. The current edition of the Contract was approved in August 2013 and we discourage using prior versions.

There are two approved versions of the Contract: the "Residential Contract for Sale and Purchase" and the "As Is" Residential Contract for Sale and Purchase". As their titles indicate, one contract results in a sale of the property "AS IS". This means the seller has no contractual obligation to make any repairs and the buyer, although having the right inspect the property, cannot force the seller to make any repairs. For example, under the "AS IS" version, if the buyer's inspection were to find a roof leak that cost \$7,500 to repair, the seller would be under no obligation to repair it, but the buyer could terminate the Contract and receive their deposit. However, even if the seller agreed to fix the roof, the buyer would still have the right to terminate the Contract, the seller could not force the buyer to purchase the property.

Conversely in the non-AS IS version, the seller warrants the property's condition and must repair the property (up to limits stated in the Contract) if an inspection reveals defects covered by the warranty. So using the above example, if the inspec-

tion revealed the roof leak, the default language requires the seller to pay up to 1.5% of the price to complete the repairs. If the contract price was \$500,000, the seller would therefore be obligated to pay up to \$7,500 and in our example the buyer would be obligated to purchase the property and seller would be obligated to incur the cost and fix the roof.

But what if the roof, once the leak is repaired, has only a useful life of five years remaining? Or what if the roof had no leaks but the inspection revealed a limited useful life? Under the non-AS IS version, the buyer must nevertheless proceed with the Contract whereas under the "AS IS" version, the buyer could terminate or negotiate the price to address the future repairs. From a seller's standpoint, if their property is in pristine condition and the inspection is unlikely to reveal significant issues, because the "AS IS" version still gives the buyer an out, they prefer the non AS IS version. The point is that thought needs to go into which version of the Contract is being used and into how the blanks in the Contract are being completed.

The above example is only one of the many substantive issues that require thought and decision making when deciding which version to use and how to complete either version of the Contract. In Florida, real estate agents typically act in a "transaction broker" capacity, meaning they represent the "transaction" not the buyer or the seller. Therefore, unless a party has legal representation, they really have no unbiased person looking out solely for their interest and helping them decide which version of the Contract is best for their situation and the property being purchased or sold. Our motto remains "before you sign, get us on the line."



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