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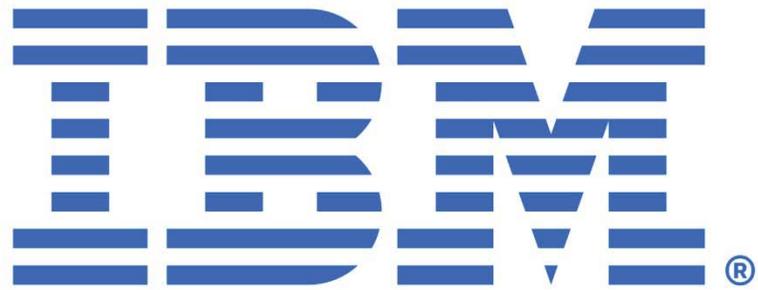
CPAs in 
Industry

March 21-22, 2019

Tampa

17 hours of CPE

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CPA's in Industry Simulcast

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Michael S. Samach
Jerry S. Wilder

Thursday, March 21, 2019

8:00am – 8:10am	Introduction and Opening Remarks
8:10am – 9:00am	<u>Economic Update</u>1 Randall T. Coleman, CFP® Senior Vice President, Wealth Management Advisor, Portfolio Manager Merrill Lynch
9:00am – 9:50am	<u>Cyber Crimes, Dark Web and Scams</u>19 Stefanie Lawless Information Security Manager / Morrison Brown Argiz & Farra, LLC
9:50am – 10:05am	Break
10:05am – 10:55am	<u>Top 20 Cloud Issues & Challenges in 2019</u>41 Avani Desai, CISSP, CISA, CIPP, CCSK Chief Marketing/Comm Officer / Schellman & Company, Inc
10:55am – 11:45am	<u>Revenue Recognition - The Aftermath</u>54 Anne Marie Hicks, CGMA, CPA Controller / CAE USA, Inc
11:45am – 12:40pm	Lunch
12:40pm – 1:30pm	<u>Recovering from a Category 5 Hurricane, What Next?</u>68 William E. Bane, CPA, CGMA, CPA, MBA Vice President - Internal Audit / Tyndall Federal Credit Union
1:30pm – 2:20pm	<u>Private Entity Exceptions (Little GAAP)</u>84 Mark E. Brechbill, CPA Managing Director / Mark Brechbill, PLLC
2:20pm – 2:35pm	Break

2:35pm – 3:25pm	<u>The Evolution of Business Intelligence and Analytics Governance.....87</u> Brian McGoff Global Business Unit Executive, IBM Data Science and AI International Business Machines
3:25pm – 4:15pm	<u>Business Law for Florida CPAs108</u> Brandon L. Ketron, JD, LL.M., CPA Associate / Gassman, Crotty & Denicolo, P.A.
4:15pm – 5:05pm	<u>Federal Tax Update for Businesses, Including Pass Thru Entities185</u> Mark E. Brechbill, CPA Managing Director/Mark Brechbill, PLLC

Friday, March 22, 2019

8:00am – 8:10am	Opening Remarks
8:10am – 9:00am	<u>Wayfair Waves188</u> Karen A. Lake, CPA Associate Director / Berkowitz Pollack Brant Advisors and Accountants, LLP and James H. Sutton Jr, CPA, Esq., LL.M. Shareholder / Moffa, Sutton & Donnini, PA
9:00am – 9:50am	<u>FASB A&A Update200</u> Michael Cheng, CPA Private Company Council Coordinator / FASB
9:50am – 10:05am	Break
10:05am – 10:55am	<u>Risk Management Insurance229</u> Karyn Roeling, CPCU, CIC CEO / Seibert Insurance Agency
10:55am – 11:45am	<u>Lease Accounting: Practical Implications238</u> Mark Marmon, CPA Director, Advisory Practice / RGP
11:45am – 12:40pm	Lunch
12:40pm – 1:30pm	<u>Panel on Negotiating Covenants - Part 1250</u> Raymond Monteleone, CPA President and Founding Member / Paladin Global Partners and Patrick M. Mosley Shareholder / Hill Ward & Henderson and Greg Parks Commerical Relationship Manager / Wells Fargo Center and Steve Wilder CFO/CIO / City Furniture, Inc

1:30pm – 1:40pm

Break

1:40pm – 2:30pm

[Panel on Negotiating Covenants - Part 2.....256](#)

Raymond Monteleone, CPA
President and Founding Member / Paladin Global Partners
and
Patrick M. Mosley
Shareholder / Hill Ward & Henderson
and
Greg Parks
Commerical Relationship Manager / Wells Fargo Center
and
Steve Wilder
CFO/CIO / City Furniture, Inc

2:30pm – 3:20pm

**[8 Financial Headwinds – Obstacles that Make it Difficult to Retire Well
in this World.....262](#)**

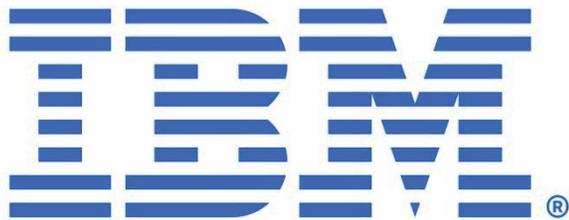
Jeff Juniper
Registered Investment Representative RIA
Juniper Wealth Management, LLC

3:20pm – 4:10pm

[Learning the Language of a Fraudster.....274](#)

R. Kevin Cross, CPA, MST, EA
Fraud lecturer, Author, and Counselor / Account 417, LLC

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Economic Update

Randall T. Coleman, CFP®

Randall T. Coleman, CFP
Senior Vice President
Wealth Management Advisor

Randy Coleman is a Financial Advisor in the Rockledge, Florida, Merrill Lynch office. He works with his clients and their other professional advisors to create an overall wealth management strategy tailored to each individual or family's unique circumstance. Randy earned his B.S. degree in Accounting from the University of Central Florida and actively maintains a CPA Certification in Florida. While not practicing as a CPA at Merrill Lynch, his continued involvement in the profession enable him to offer assistance on complex taxation, wealth transfer, and estate planning issues to clients and their other professional specialists. Randy does not provide tax advice in his current role at Merrill Lynch. He first joined Merrill Lynch in 1994 and has been serving clients in the financial services industry since 1983. Randy is Past President of Titusville Sunrise Rotary, the Brevard County Chapter of Certified Public Accountants, The Brevard County Estate Planning Council, and the Friends of the Children's Advocacy Center of Brevard. He currently serves on the Executive Committee of the Jess Parrish Medical Foundation Board of Directors. Other current board positions include: Titusville YMCA, United Way of Brevard County, Eastern Florida State College Foundation and The Brevard County Civilian Military Relations Council.

Randy resides in Titusville with his wife Mary. They have two children, Randall and Marissa.



MARKET INSIGHTS

Guide to the Markets[®]

U.S. | 1Q 2019 | As of January 31, 2019



J.P.Morgan
Asset Management

Investing involves risk including possible loss of principle. Information is current as of the date of this material.

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Randall T. Coleman, CFP®
 Senior Vice President
 Wealth Management Advisor
 Portfolio Manager
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randall_coleman@ml.com

Randy Coleman is a Financial Advisor in the Rockledge, Florida, Merrill Lynch office. He works with his clients and their other professional advisors to create an overall wealth management strategy tailored to each individual or family's unique circumstance. Randy earned his B.S. degree in Accounting from the University of Central Florida and actively maintains a CPA Certification in Florida. While not practicing as a CPA at Merrill Lynch, his continued involvement in the profession enable him to offer assistance on complex taxation, wealth transfer, and estate planning issues to clients and their other professional specialists. Randy does not provide tax advice in his current role at Merrill Lynch. He first joined Merrill Lynch in 1994 and has been serving clients in the financial services industry since 1983. Randy is Past President of Titusville Sunrise Rotary, the Brevard County Chapter of Certified Public Accountants, The Brevard County Estate Planning Council, and the Friends of the Children's Advocacy Center of Brevard. He currently serves on the Executive Committee of the Jess Parrish Medical Foundation Board of Directors. Other current board positions include: Titusville YMCA, United Way of Brevard County, Eastern Florida State College Foundation and The Brevard County Civilian Military Relations Council. Randy resides in Titusville with his wife Mary. They have two children, Randall and Marissa.

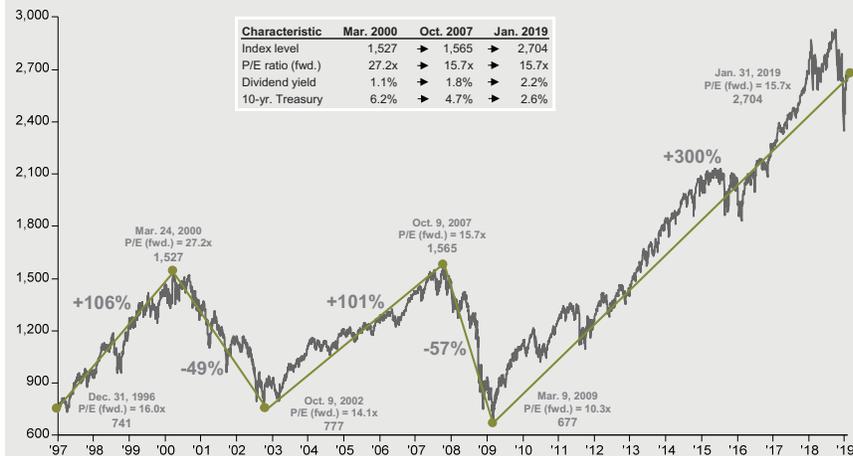
Presented to: FICPA

S&P 500 Index at inflection points

GTM – U.S. | 4

Equities

S&P 500 Price Index



Source: Compustat, FactSet, Federal Reserve, Standard & Poor's, J.P. Morgan Asset Management.
 Dividend yield is calculated as consensus estimates of dividends for the next 12 months, divided by most recent price, as provided by Compustat.
 Forward price to earnings ratio is a bottom-up calculation based on the most recent S&P 500 Index price, divided by consensus estimates for earnings in the next 12 months (NTM), and is provided by FactSet Market Aggregates. Returns are cumulative and based on S&P 500 Index price movement only, and do not include the reinvestment of dividends. Past performance is not indicative of future returns.
 Guide to the Markets – U.S. Data are as of January 31, 2019.

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S&P 500 Index: Forward P/E ratio



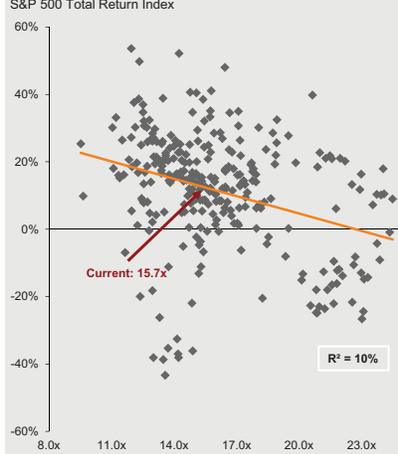
Valuation measure	Description	Latest	25-year avg.*	Std. dev. Over-/under-Valued
P/E	Forward P/E	15.7x	16.1x	-0.1
CAPE	Shiller's P/E	28.8	26.9	0.3
Div. Yield	Dividend yield	2.2%	2.0%	-0.5
P/B	Price to book	2.9	2.9	0.0
P/CF	Price to cash flow	11.6	10.7	0.5
EY Spread	EY minus Baa yield	1.3%	-0.1%	-0.7

Source: FactSet, FRB, Robert Shiller, Standard & Poor's, Thomson Reuters, J.P. Morgan Asset Management.
 Price to earnings is price divided by consensus analyst estimates of earnings per share for the next 12 months as provided by IBES since February 1994, and FactSet for January 31, 2019. Average P/E and standard deviations are calculated using 25 years of IBES history. Shiller's P/E uses trailing 10-years of inflation-adjusted earnings as reported by companies. Dividend yield is calculated as the next 12-month consensus dividend divided by most recent price. Price to book ratio is the price divided by book value per share. Price to cash flow is price divided by NTM cash flow. EY minus Baa yield is the forward earnings yield (consensus analyst estimates of EPS over the next 12 months divided by price) minus the Moody's Baa seasoned corporate bond yield. Std. dev. over-/under-valued is calculated using the average and standard deviation over 25 years for each measure. *P/CF is a 20-year average due to cash flow data availability.
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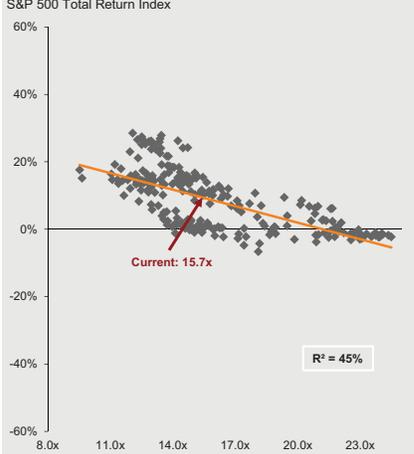


Equities

Forward P/E and subsequent 1-yr. returns



Forward P/E and subsequent 5-yr. annualized returns



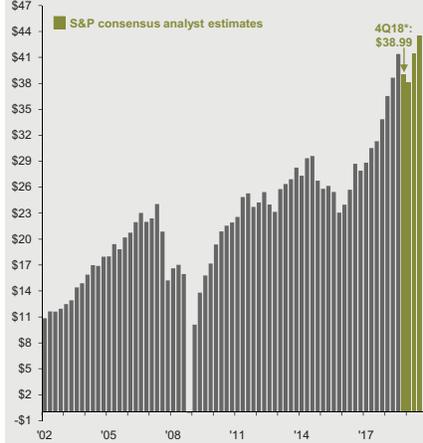
Source: FactSet, Standard & Poor's, Thomson Reuters, J.P. Morgan Asset Management.
 Returns are 12-month and 60-month annualized total returns, measured monthly, beginning December 31, 1993. R² represents the percent of total variation in total returns that can be explained by forward P/E ratios.
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Equities

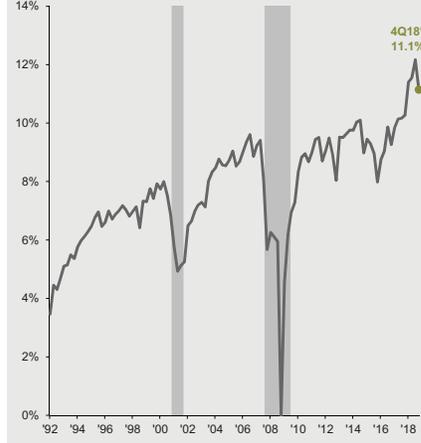
S&P 500 operating earnings per share

Index quarterly operating earnings



S&P 500 profit margins

Quarterly operating earnings/sales



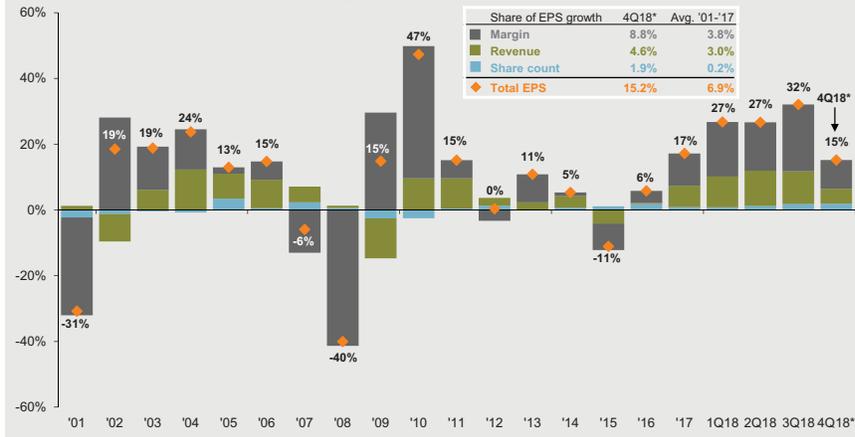
Source: Compustat, FactSet, Standard & Poor's, J.P. Morgan Asset Management; (Right) Federal Reserve. EPS levels are based on operating earnings per share. Earnings estimates are Standard & Poor's consensus analyst expectations. Past performance is not indicative of future returns. *4Q18 earnings are calculated using actual earnings for 57.7% of S&P 500 market cap and earnings estimates for the remaining companies.

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Equities

S&P 500 year-over-year operating EPS growth

Annual growth broken into revenue, changes in profit margin & changes in share count

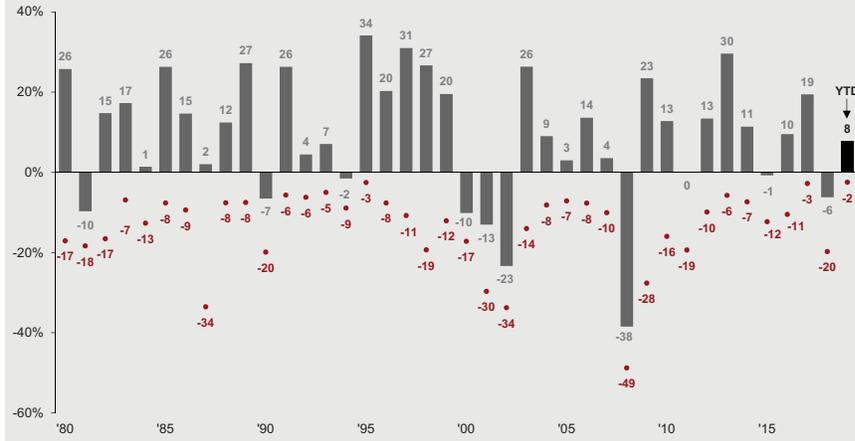


Source: Compustat, FactSet, Standard & Poor's, J.P. Morgan Asset Management. EPS levels are based on annual operating earnings per share except for 2018, which is quarterly. Percentages may not sum due to rounding. Past performance is not indicative of future returns. *4Q18 earnings are calculated using actual earnings for 57.7% of S&P 500 market cap and earnings estimates for the remaining companies.

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Equities

S&P 500 intra-year declines vs. calendar year returns
 Despite average intra-year drops of 13.9%, annual returns positive in 29 of 39 years

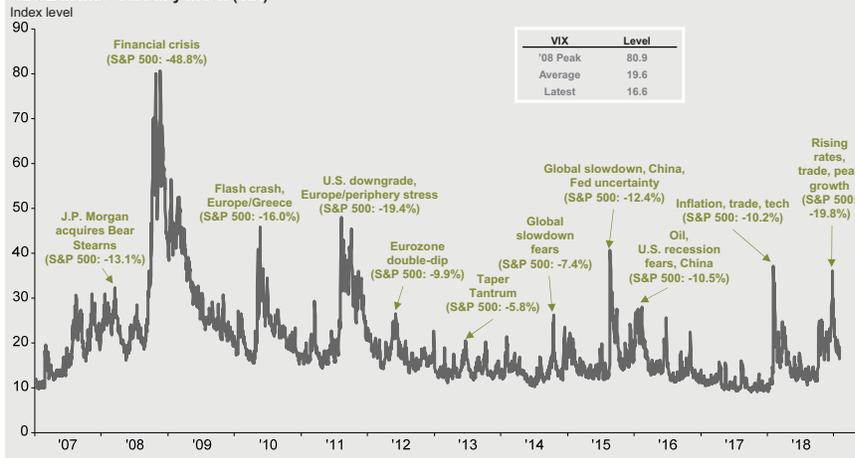


Source: FactSet, Standard & Poor's, J.P. Morgan Asset Management.
 Returns are based on price index only and do not include dividends. Intra-year drops refers to the largest market drops from a peak to a trough during the year. For illustrative purposes only. Returns shown are calendar year returns from 1980 to 2018, over which time period the average annual return was 8.4%.
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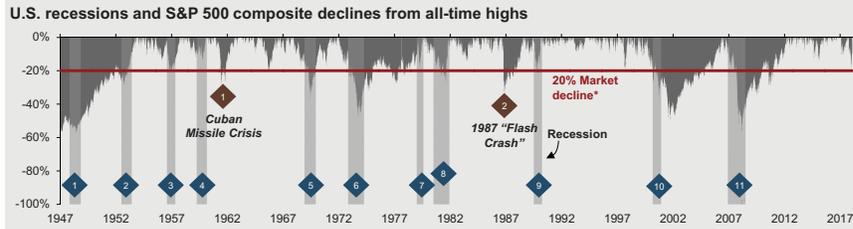
CBOE Market Volatility Index (VIX)



Sources: CBOE, FactSet, J.P. Morgan Asset Management.
 Stock market returns are based on calendar year peak to trough declines experienced during VIX spike, except for J.P. Morgan acquires Bear Stearns, which is based on the calendar year peak to the acquisition date. Average is based on the period shown from 12/31/2006 to 1/31/2019.
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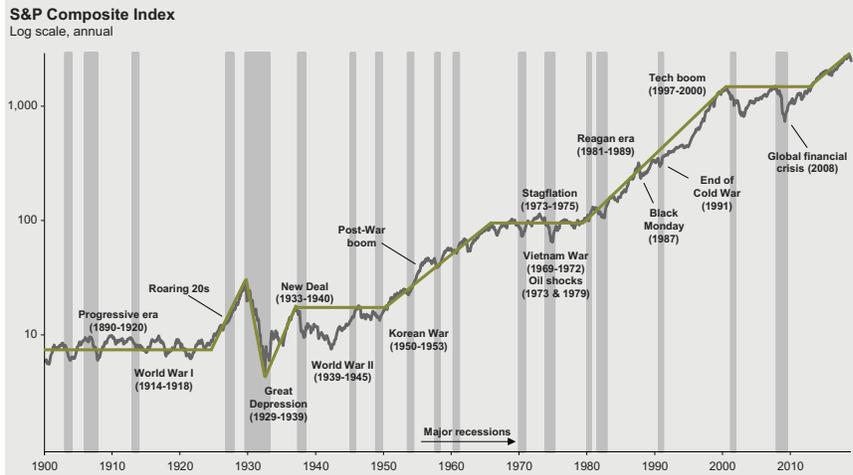
Characteristics of recessions and related stock market declines

Recession	Recession			Related Market Sell-off			Macro Environment		
	Peak Quarter	Trough Quarter	% Decline	Peak Date	Trough Date	% Decline	Commodity Spike	Aggressive Fed	Extreme Valuations
1 Recession of 1949	4Q48	4Q49	-1.5%	6/15/1948	6/13/1949	-21%			
2 Recession of 1953	2Q53	2Q54	-2.4%	1/5/1953	8/14/1953	-15%			
3 Recession of 1958	3Q57	2Q58	-3.0%	8/2/1956	10/22/1957	-22%			
4 Recession of 1960-61	2Q60	1Q61	-0.1%	8/3/1959	10/25/1960	-14%			
5 Recession of 1969-70	4Q69	4Q70	-0.2%	11/29/1968	5/26/1970	-36%			
6 Recession of 1973-75	4Q73	1Q75	-3.1%	1/11/1973	10/3/1974	-48%			
7 Recession of 1980	1Q80	3Q80	-2.2%	2/13/1980	3/27/1980	-17%			
8 Recession of 1981-82	3Q81	4Q82	-2.5%	11/28/1980	8/12/1982	-27%			
9 Early 1990s recession	3Q90	1Q91	-1.4%	7/16/1990	10/11/1990	-20%			
10 Early 2000s recession	1Q01	4Q01	-0.4%	3/24/2000	10/9/2002	-49%			
11 Great Recession	4Q07	2Q09	-4.0%	10/9/2007	3/9/2009	-57%			
Non-recession Bear Markets									
1 1962 flash crash, Cuban Missile Crisis	-	-	-	12/12/1961	6/26/1962	-28%			
2 1987 flash crash, program trading, overheating markets	-	-	-	8/25/1987	12/4/1987	-34%			
Average			-1.9%						

Source: FactSet, NBER, Robert Shiller, Standard & Poor's, J.P. Morgan Asset Management.
 *A bear market is defined as a 20% or more decline from the previous market high. The related market return is the peak to trough return over the cycle. Periods of "Recession" are defined using NBER business cycle dates. "Commodity spikes" are defined as movement in oil prices of over 100% over an 18-month period. Periods of "Extreme Valuations" are those where S&P 500 last 12 months' P/E levels were approximately two standard deviations above long-run averages, or time periods where equity market valuations appeared expensive given the broader macroeconomic environment. "Aggressive Fed Tightening" is defined as Federal Reserve monetary tightening that was unexpected and/or significant in magnitude. Bear and Bull returns are price returns.
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Source: FactSet, NBER, Robert Shiller, J.P. Morgan Asset Management.
 Data shown in log scale to best illustrate long-term index patterns. Past performance is not indicative of future returns. Chart is for illustrative purposes only.
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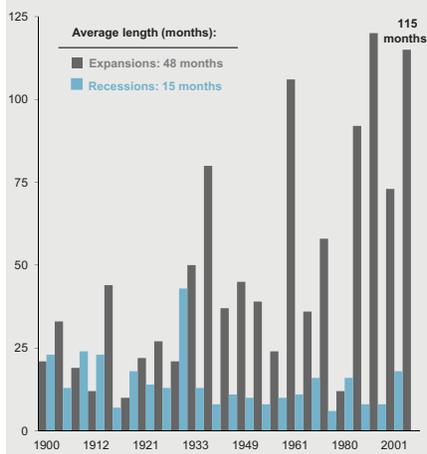
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The length and strength of expansions

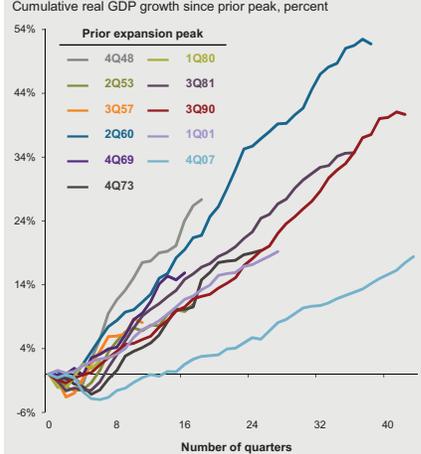
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Economy

Length of economic expansions and recessions



Strength of economic expansions



Source: BEA, NBER, J.P. Morgan Asset Management. *Chart assumes current expansion started in July 2009 and continued through January 2019, lasting 115 months so far. Data for length of economic expansions and recessions obtained from the National Bureau of Economic Research (NBER). These data can be found at www.nber.org/cycles/ and reflect information through January 2019. Past performance is not a reliable indicator of current and future results.
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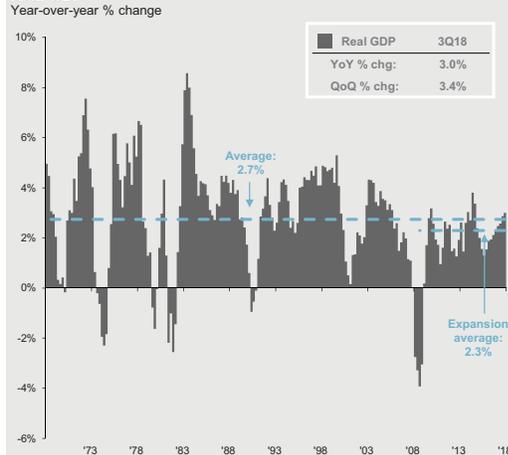
13

Economic growth and the composition of GDP

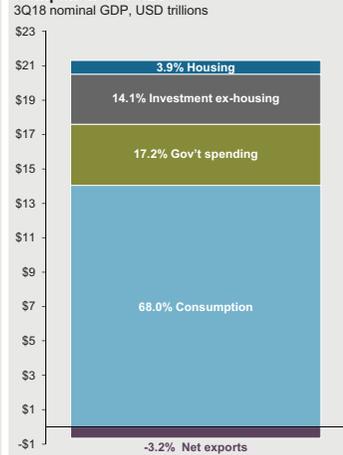
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Economy

Real GDP



Components of GDP



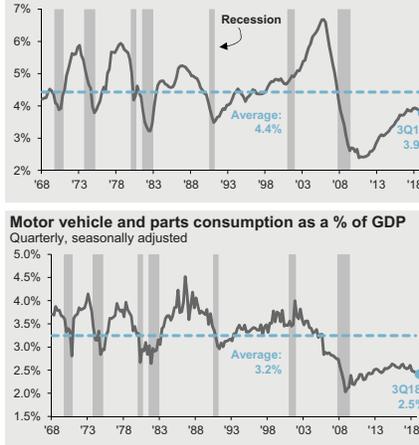
Source: BEA, FactSet, J.P. Morgan Asset Management.
Values may not sum to 100% due to rounding. Quarter-over-quarter percent changes are at an annualized rate. Average represents the annualized growth rate for the full period. Expansion average refers to the period starting in the third quarter of 2009.
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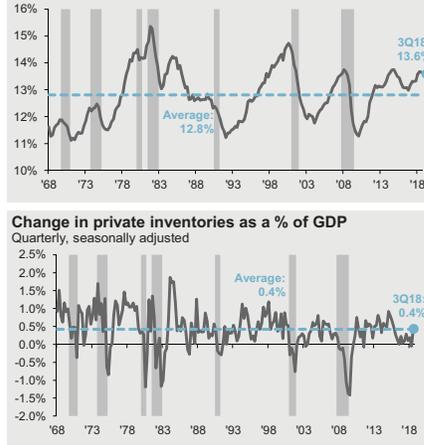
Residential investment as a % of GDP

Quarterly, seasonally adjusted



Business fixed investment as a % of GDP

Quarterly, seasonally adjusted



Motor vehicle and parts consumption as a % of GDP

Quarterly, seasonally adjusted



Change in private inventories as a % of GDP

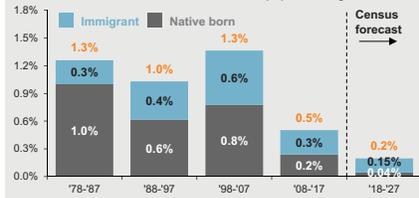
Quarterly, seasonally adjusted



Source: BEA, FactSet, J.P. Morgan Asset Management.
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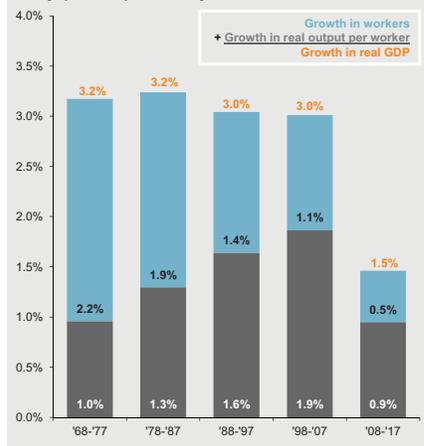
Growth in working-age population

Percent increase in civilian non-institutional population ages 16-64



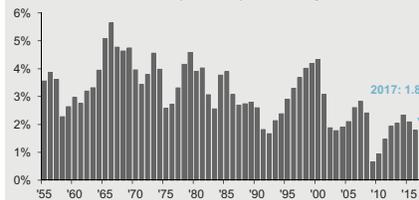
Drivers of GDP growth

Average year-over-year % change



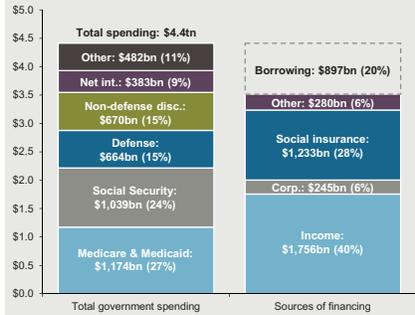
Growth in private non-residential capital stock

Non-residential fixed assets, year-over-year % change



Source: J.P. Morgan Asset Management; (Top left) Census Bureau, DOD, DOJ; (Top left and right) BLS; (Right and bottom left) BEA.
GDP drivers are calculated as the average annualized growth in the 10 years ending in 4Q17. Future working-age population is calculated as the total estimated number of Americans from the Census Bureau, per the September 2018 report, controlled for military enrollment; growth in institutionalized population and demographic trends. Growth in working-age population does not include illegal immigration; DOD Troop Readiness reports used to estimate percent of population enlisted.
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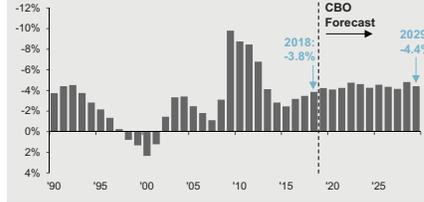
The 2019 federal budget
CBO Baseline forecast, USD trillions



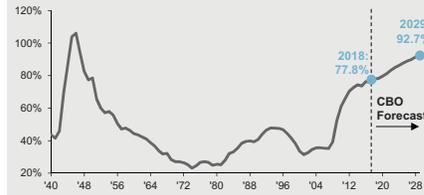
CBO's Baseline assumptions

	2019	'20-'21	'22-'23	'24-'29
Real GDP growth	2.7%	1.7%	1.6%	1.8%
10-year Treasury	3.4%	3.7%	3.7%	3.7%
Headline inflation (CPI)	2.1%	2.6%	2.5%	2.3%
Unemployment	3.5%	3.9%	4.7%	4.8%

Federal budget surplus/deficit
% of GDP, 1990 – 2029, 2019 CBO Baseline

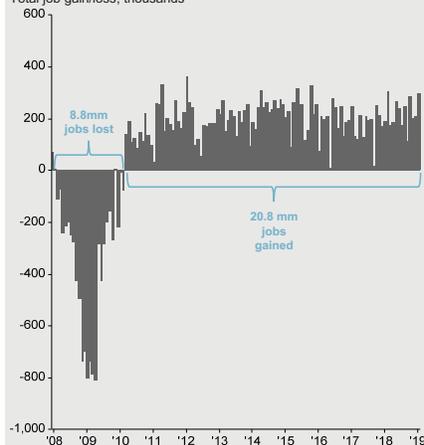


Federal net debt (accumulated deficits)
% of GDP, 1940 – 2029, 2019 CBO Baseline, end of fiscal year



Source: CBO, J.P. Morgan Asset Management; (Top and bottom right) BEA, Treasury Department.
2019 Federal Budget is based on the Congressional Budget Office (CBO) January 2019 Baseline Budget Forecast. CBO Baseline is based on the Congressional Budget Office (CBO) January 2019 Update to Economic Outlook. Other spending includes, but is not limited to, health insurance subsidies, income security and federal civilian and military retirement. Note: Years shown are fiscal years (Oct. 1 through Sep. 30).
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Employment – Total private payroll
Total job gain/loss, thousands



Labor force participation rate decline since 2007 peak*
Population employed or looking for work as a % of total, ages 16+



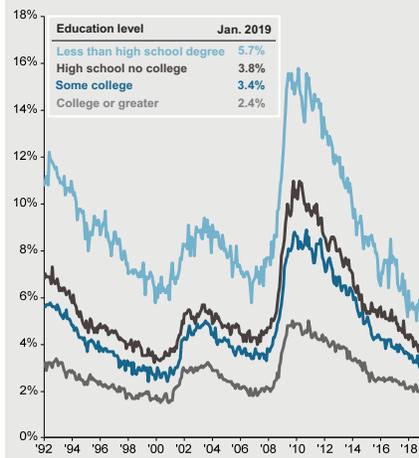
Net job creation since February 2010
Millions of jobs



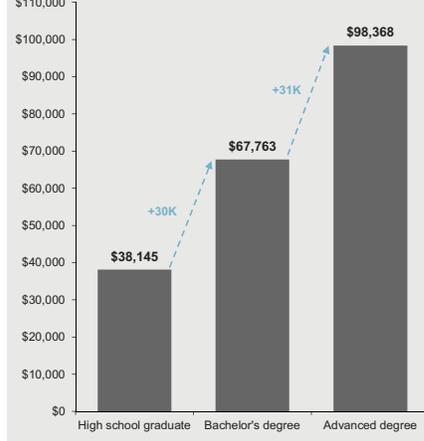
Source: BLS, FactSet, J.P. Morgan Asset Management. (Bottom right) Info. fin. & bus. svcs. = Information, financial activities and professional and business services; Mfg. trade & trans. = Manufacturing, trade, transportation and utilities; Leisure, hopt. & other svcs. = Leisure, hospitality and other services; Educ. & health svcs. = Education & health services; Mining & construct. = Natural resources mining and construction; Gov't = Government.
*Aging effect on the labor force participation rate is the estimated number of people who are no longer employed or looking for work because they are retired. Cyclical effect is the estimated number of people who lose their jobs and stop looking for work or do not look for work because of the economic conditions. Other represents the drop in labor force participation from the prior expansion peak that cannot be explained by age or cyclical effects. Estimates for reason of decline in labor force participation rate are made by J.P. Morgan Asset Management.
Guide to the Markets – U.S. Data are as of January 31, 2019.

Economy

Unemployment rate by education level



Average annual earnings by highest degree earned
Workers aged 18 and older, 2017

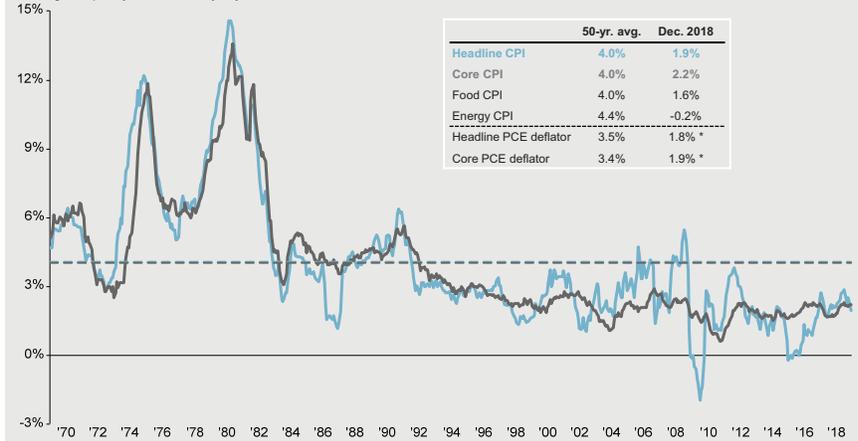


Source: J.P. Morgan Asset Management; (Left) BLS, FactSet; (Right) Census Bureau. Unemployment rates shown are for civilians aged 25 and older. Earnings by educational attainment comes from the Current Population Survey and is published under historical income tables by person by the Census Bureau. Guide to the Markets – U.S. Data are as of January 31, 2019.

Economy

CPI and core CPI

% change vs. prior year, seasonally adjusted



Source: BLS, FactSet, J.P. Morgan Asset Management. CPI used is CPI-U and values shown are % change vs. one year ago. Core CPI is defined as CPI excluding food and energy prices. The Personal Consumption Expenditure (PCE) deflator employs an evolving chain-weighted basket of consumer expenditures instead of the fixed-weight basket used in CPI calculations. *PCE figures are as of November 2018. Guide to the Markets – U.S. Data are as of January 31, 2019.

Change in production and consumption of liquid fuels

Production, consumption and inventories, millions of barrels per day

Production	2016	2017	2018	2019*	2020*	Growth since '16
U.S.	14.8	15.7	17.9	19.6	20.8	40.5%
OPEC	37.4	37.3	37.2	36.2	36.1	-3.7%
Russia	11.3	11.2	11.4	11.5	11.7	3.7%
Global	97.4	98.0	100.4	101.8	103.5	6.3%
Consumption	2016	2017	2018	2019*	2020*	Growth since '16
U.S.	19.7	20.0	20.5	20.8	21.0	6.7%
China	12.8	13.4	13.9	14.3	14.8	15.9%
Global	96.9	98.6	100.0	101.5	103.1	6.3%
Inventory Change	2016	2017	2018	2019*	2020*	Growth since '16
	0.5	-0.5	0.4	0.3	0.4	

U.S. crude oil inventories and rig count**

Million barrels, number of active rigs



Price of oil

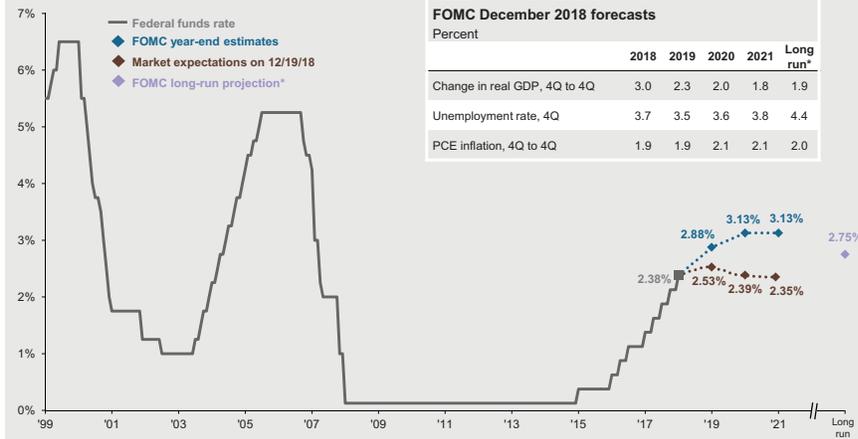
WTI crude, nominal prices, USD/barrel



Source: J.P. Morgan Asset Management, (Top and bottom left) EIA; (Right) FactSet; (Bottom left) Baker Hughes.
 *Forecasts are from the January 2019 EIA Short-Term Energy Outlook and start in 2019. **U.S. crude oil inventories include the Strategic Petroleum Reserve (SPR). Active rig count includes both natural gas and oil rigs. WTI crude prices are monthly averages in USD using continuous contract NYM prices.
 Guide to the Markets – U.S. Data are as of January 31, 2019.

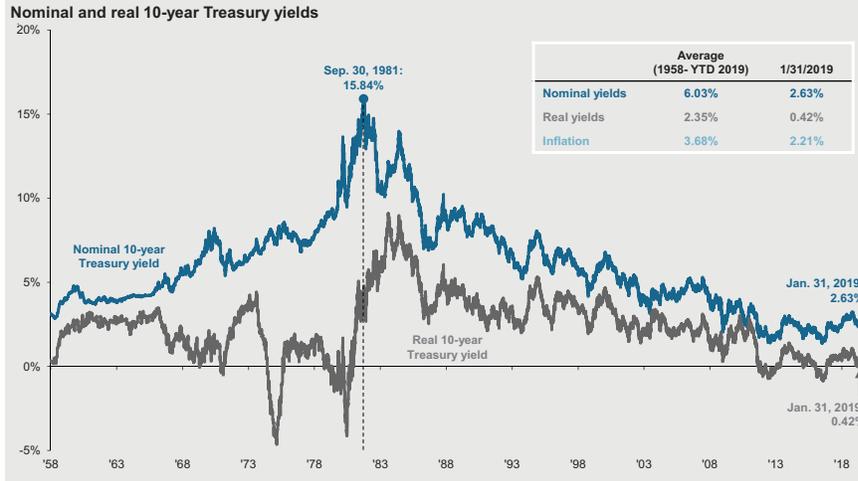
Federal funds rate expectations

FOMC and market expectations for the federal funds rate



Source: Bloomberg, FactSet, Federal Reserve, J.P. Morgan Asset Management.
 Market expectations are the federal funds rates priced into the fed futures market as of the date of the December 2018 FOMC meeting and are through November 2021. *Long-run projections are the rates of growth, unemployment and inflation to which a policymaker expects the economy to converge over the next five to six years in absence of further shocks and under appropriate monetary policy.
 Guide to the Markets – U.S. Data are as of January 31, 2019.

Fixed income



Source: BLS, FactSet, Federal Reserve, J.P. Morgan Asset Management.
 Real 10-year Treasury yields are calculated as the daily Treasury yield less year-over-year core CPI inflation for that month except for January 2019, where real yields are calculated by subtracting out December 2018 year-over-year core inflation.
 Guide to the Markets – U.S. Data are as of January 31, 2019.

J.P.Morgan
Asset Management

Fixed income



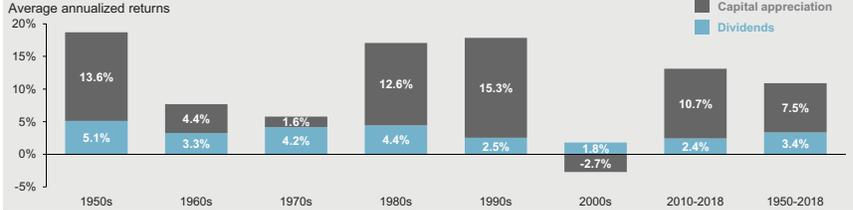
Source: FactSet, Federal Reserve, J.P. Morgan Asset Management. *From January 1962 to May 1976 short-term bond is U.S. 1-year bond. Short-dated bond is 2-year from June 1976. Time to recession is calculated as the time between the final sustained inversion of the yield curve prior to recession, and the onset of recession.
 Guide to the Markets – U.S. Data are as of January 31, 2019.

J.P.Morgan
Asset Management

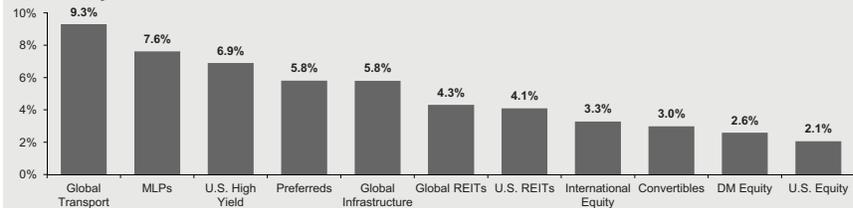
Yield alternatives: Domestic and global

GTM – U.S. | 58

S&P 500 total return: Dividends vs. capital appreciation



Asset class yields



Source: FactSet, Standard & Poor's, J.P. Morgan Asset Management; (Top) Ibbotson; (Bottom) Alerian, BAML, Barclays, Bloomberg, Clarkson, Drewry Maritime Consultants, Federal Reserve, FTSE, MSCI, NCREIF. Dividend vs. capital appreciation returns are through 12/31/18. Yields are as of 12/31/18, except Global Transport, Global Infrastructure and U.S. Real Estate (9/30/18). Global Transport: Levered yields for transport assets are calculated as the difference between charter rates (rental income), operating expenses, debt amortization and interest expenses, as a percentage of equity value. Yields for each of the sub-vessel types above are calculated and respective weightings are applied to each of the sub-sectors to arrive at the current levered yields for Global Transportation; MLPs: Alerian MLP; Preferreds: BAML Hybrid Preferred Securities; U.S. High Yield: Bloomberg US Aggregate Corporate High Yield; Global Infrastructure: MSCI Global Infrastructure Asset Index-Low risk; U.S. Real Estate: NCREIF-ODCE Index; Global REITs: FTSE NAREIT Global REITs; Convertibles: Bloomberg Barclays U.S. Convertibles Composite; International Equity: MSCI AC World ex-U.S.; U.S. 10-year: Tullett Prebon; U.S. Equity: MSCI USA. *Guide to the Markets – U.S.* Data are as of January 31, 2019.

J.P.Morgan
Asset Management

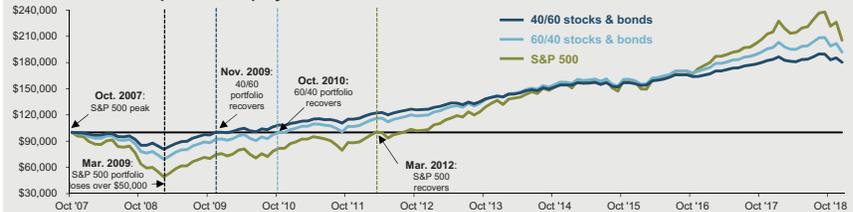
Alternatives

25

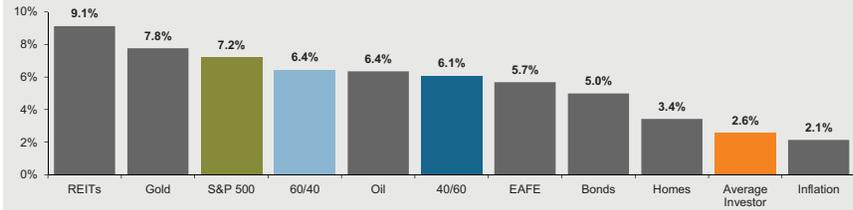
Diversification and the average investor

GTM – U.S. | 64

Portfolio returns: Equities vs. equity and fixed income blend



20-year annualized returns by asset class (1998 – 2017)

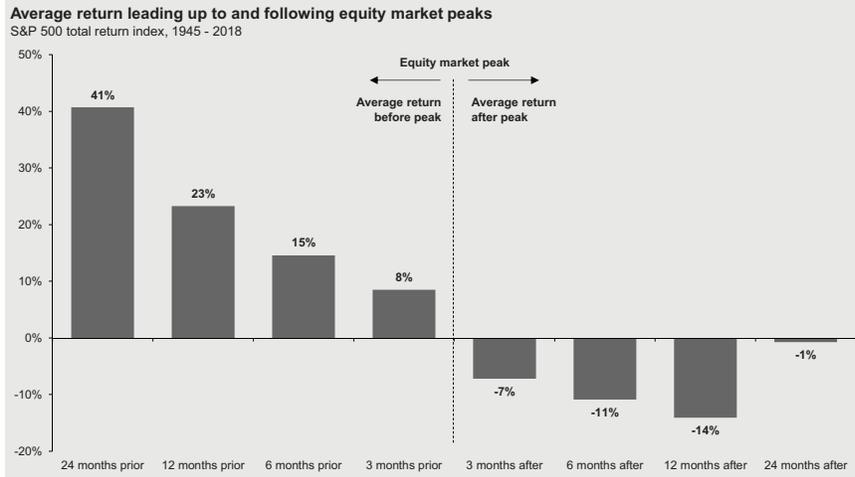


Source: J.P. Morgan Asset Management; (Top) Barclays, Bloomberg, FactSet, Standard & Poor's; (Bottom) Dalbar Inc. Indices used are as follows: REITs: NAREIT Equity REIT Index; EAFE: MSCI EAFE; Oil: WTI Index; Bonds: Bloomberg Barclays U.S. Aggregate Index; Homes: median sale price of existing single-family homes; Gold: USD/roy oz.; Inflation: CPI; 60/40: A balanced portfolio with 60% invested in S&P 500 Index and 40% invested in high-quality U.S. fixed income, represented by the Bloomberg Barclays U.S. Aggregate Index. The portfolio is rebalanced annually. Average asset allocation investor return is based on an analysis by Dalbar Inc., which utilizes the net of aggregate mutual fund sales, redemptions and exchanges each month as a measure of investor behavior. Returns are annualized (and total return where applicable) and represent the 20-year period ending 12/31/17 to match Dalbar's most recent analysis. *Guide to the Markets – U.S.* Data are as of January 31, 2019.

J.P.Morgan
Asset Management

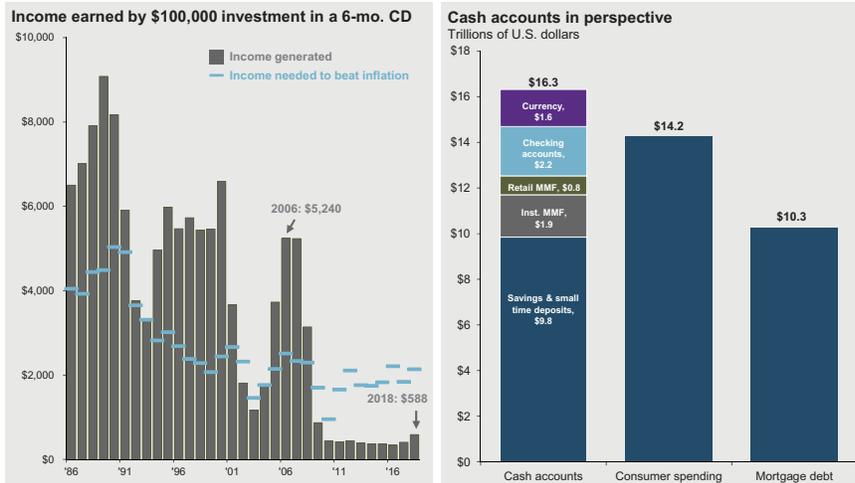
Investing principles

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Source: FactSet, Robert Shiller, Standard & Poor's, J.P. Morgan Asset Management.
 Chart is based on return data from 11 bear markets since 1945. A bear market is defined as a decline of 20% or more in the S&P 500 benchmark.
 Monthly total return data from 1945 to 1970 is from the S&P Shiller Composite index. From 1970 to present, return data is from Standard & Poor's.
 Guide to the Markets – U.S. Data are as of January 31, 2019.

Investing principles



Source: FactSet, J.P. Morgan Asset Management; (Left) Bankrate.com; (Right) BEA, Federal Reserve System.
 Cash accounts are as of 12/31/2018, consumer spending is as of 11/30/18 and mortgage debt is as of 9/30/18. M2 includes M1 (currency in circulation and checking accounts) plus savings deposits, small-denomination time deposits and retail money market mutual funds. Institutional money market funds are considered a memorandum item, not included in M2. Annual income is for illustrative purposes and is calculated based on the 6-month CD yield on average during each year and \$100,000 invested. Past performance is not indicative of comparable future results.
 Guide to the Markets – U.S. Data are as of January 31, 2019.

Investing principles

All indexes are unmanaged and an individual cannot invest directly in an index. Index returns do not include fees or expenses.

Equities:

The **Dow Jones Industrial Average** is a price-weighted average of 30 actively traded blue-chip U.S. stocks. The **MSCI ACWI (All Country World Index)** is a free float-adjusted market capitalization weighted index that is designed to measure the equity market performance of developed and emerging markets.

The **MSCI EAFE Index (Europe, Australasia, Far East)** is a free float-adjusted market capitalization index that is designed to measure the equity market performance of developed markets, excluding the US & Canada.

The **MSCI Emerging Markets Index** is a free float-adjusted market capitalization index that is designed to measure equity market performance in the global emerging markets.

The **MSCI Europe Index** is a free float-adjusted market capitalization index that is designed to measure developed market equity performance in Europe.

The **MSCI Pacific Index** is a free float-adjusted market capitalization index that is designed to measure equity market performance in the Pacific region.

The **Russell 1000 Index** measures the performance of the 1,000 largest companies in the Russell 3000.

The **Russell 1000 Value Index** measures the performance of those Russell 1000 companies with higher price-to-book ratios and higher forecasted growth values.

The **Russell 1000 Value Index** measures the performance of those Russell 1000 companies with lower price-to-book ratios and lower forecasted growth values.

The **Russell 2000 Index** measures the performance of the 2,000 smallest companies in the Russell 3000 Index.

The **Russell 2000 Growth Index** measures the performance of those Russell 2000 companies with higher price-to-book ratios and higher forecasted growth values.

The **Russell 2000 Value Index** measures the performance of those Russell 2000 companies with lower price-to-book ratios and lower forecasted growth values.

The **Russell 3000 Index** measures the performance of the 3,000 largest U.S. companies based on total market capitalization.

The **Russell Midcap Index** measures the performance of the 800 smallest companies in the Russell 1000 Index.

The **Russell Midcap Growth Index** measures the performance of those Russell Midcap companies with higher price-to-book ratios and higher forecasted growth values. The stocks are also members of the Russell 1000 Growth Index.

The **Russell Midcap Value Index** measures the performance of those Russell Midcap companies with lower price-to-book ratios and lower forecasted growth values. The stocks are also members of the Russell 1000 Value Index.

The **S&P 500 Index** is widely regarded as the best single gauge of the U.S. equities market. The index includes a representative sample of 500 leading companies in leading industries of the U.S. economy. The **S&P 500 Index** focuses on the large-cap segment of the market; however, since it includes a significant portion of the total value of the market, it also represents the market.

Fixed Income:

The **Bloomberg Barclays 1-3 Month U.S. Treasury Bill Index** includes all publicly issued zero-coupon U.S. Treasury Bills that have a remaining maturity of less than 3 months and more than 1 month, are rated investment grade, and have \$250 million or more of outstanding face value. In addition, the securities must be denominated in U.S. dollars and must be fixed rate and non convertible.

The **Bloomberg Barclays Global High Yield Index** is a multi-currency flagship measure of the global high yield debt market. The index represents the union of the US High Yield, the Pan-European High Yield, and Emerging Markets (EM) Hard Currency High Yield Indices. The high yield and emerging markets sub-components are mutually exclusive. Until January 1, 2011, the index also included CMBS high yield securities.

The **Bloomberg Barclays Municipal Index** consists of a broad selection of investment-grade general obligation and revenue bonds of maturities ranging from one year to 30 years. It is an unmanaged index representative of the tax-exempt bond market.

The **Bloomberg Barclays US Dollar Floating Rate Note (FRN) Index** provides a measure of the U.S. dollar denominated floating rate note market.

The **Bloomberg Barclays US Corporate Investment Grade Index** is an unmanaged index consisting of publicly issued US Corporate and specified foreign debentures and secured notes that are rated investment grade (Ba3/BBB or higher) by at least two ratings agencies, have at least one year to final maturity and have at least \$250 million par amount outstanding. To qualify, bonds must be SEC-registered.

The **Bloomberg Barclays US High Yield Index** covers the universe of fixed rate, non-investment grade debt. Eurobonds and debt issues from countries designated as emerging markets (sovereign rating of Ba1/BBB-/BBB- and below using the middle of Moody's, S&P, and Fitch) are excluded, but Canadian and global bonds (SEC registered) of issuers in non-EMC countries are included.

The **Bloomberg Barclays US Mortgage Backed Securities Index** is an unmanaged index that measures the performance of investment grade fixed-rate mortgage backed pass-through securities of GNMA, FNMA and FHLMC.

The **Bloomberg Barclays US TIPS Index** consists of Inflation-Protection securities issued by the U.S. Treasury.

The **J.P. Morgan Emerging Market Bond Global Index (EMBI)** includes U.S. dollar denominated Brady bonds, Eurobonds, traded loans and local market debt instruments issued by sovereign and quasi-sovereign entities.

The **J.P. Morgan Domestic High Yield Index** is designed to mirror the investable universe of the U.S. dollar domestic high yield corporate debt market.

The **J.P. Morgan Corporate Emerging Markets Bond Index Broad Diversified (CEMBI Broad Diversified)** is an expansion of the J.P. Morgan Corporate Emerging Markets Bond Index (CEMBI). The CEMBI is a market capitalization weighted index consisting of U.S. dollar denominated emerging market corporate bonds.

The **J.P. Morgan Emerging Markets Bond Index Global Diversified (EMBI Global Diversified)** tracks total returns for U.S. dollar-denominated debt instruments issued by emerging market sovereign and quasi-sovereign entities. Brady bonds, loans, Eurobonds. The index limits the exposure of some of the larger countries.

The **J.P. Morgan GBI EM Global Diversified** tracks the performance of local currency debt issued by emerging market governments, whose debt is accessible by most of the international investor base.

The **U.S. Treasury Index** is a component of the U.S. Government index.

Other asset classes:

The **Alerian MLP Index** is a composite of the 50 most prominent energy Master Limited Partnerships (MLPs) that provides investors with an unbiased, comprehensive benchmark for the asset class.

The **Bloomberg Commodity Index** and related sub-indices are composed of futures contracts on physical commodities and represents twenty two separate commodities traded on U.S. exchanges, with the exception of aluminum, nickel, and zinc.

The **Cambridge Associates U.S. Global Buyout and Growth Index** is based on data compiled from 1,768 global U.S. & ex-U.S. buyout and growth equity funds, including fully liquidated partnerships, formed between 1986 and 2013.

The **CS/Tremont Hedge Fund Index** is compiled by Credit Suisse Tremont Index, LLC. It is an asset-weighted hedge fund index and includes only funds, as opposed to separate accounts. The index uses the Credit Suisse Tremont database, which tracks over 4500 funds, and consists only of funds with a minimum of US\$50 million under management, a 12-month track record, and audited financial statements. It is calculated and rebalanced on a monthly basis, and shown net of all performance fees and expenses. It is the exclusive property of Credit Suisse Tremont Index, LLC.

The **HFRI Monthly Indices (HFRI)** are equally weighted performance indexes, utilized by numerous hedge fund managers as a benchmark for their own hedge funds. The HFRI are broken down into 4 main strategies, each with multiple sub-strategies. All single-manager HFRI index constituents are included in the HFRI Fund Weighted Composite, which accounts for over 2200 funds listed on the Internal HFRI Database.

The **NAREIT EQUITY REIT Index** is designed to provide the most comprehensive assessment of overall industry performance, and includes all tax-qualified real estate investment trusts (REITs) that are listed on the NYSE, the American Stock Exchange or the NASDAQ National Market List.

The **NFI-ODCE**, short for NCREIF Fund Index - Open End Diversified Core Equity, is an index of investment returns reporting on both a historical and current basis the results of 33 open-end commingled funds pursuing a core investment strategy, some of which have performance histories dating back to the 1970s. The NFI-ODCE Index is capitalization-weighted and is reported gross of fees. Measurement is time-weighted.

Derivatives:

Investing in **alternative assets** involves higher risks than traditional investments and is suitable only for sophisticated investors. Alternative investments involve greater risks than traditional investments and should not be deemed a complete investment program. They are not tax efficient and an investor should consult with his/her tax advisor prior to investing. Alternative investments have higher fees than traditional investments and they may also be highly leveraged and engage in speculative investment techniques, which can magnify the potential for investment loss or gain. The value of the investment may fall as well as rise and investors may get back less than they invested.

Bonds are subject to interest rate risks. Bond prices generally fall when interest rates rise.

Investments in **commodities** may have greater volatility than investments in traditional securities, particularly if the instruments involve leverage. The value of commodity-linked derivative instruments may be affected by changes in overall market movements, commodity index volatility, changes in interest rates, or factors affecting a particular industry or commodity, such as drought, floods, weather, livestock disease, embargoes, tariffs and international economic, political and regulatory developments. Use of leveraged commodity-linked derivatives creates an opportunity for increased return but, at the same time, creates the possibility for greater loss.

Derivatives may be riskier than other types of investments because they may be more sensitive to changes in economic or market conditions than other types of investments and could result in losses that significantly exceed the original investment. The use of derivatives may not be successful, resulting in investment losses, and the cost of such strategies may reduce investment returns.

Distressed Restructuring Strategies employ an investment process focused on corporate fixed income instruments, primarily on corporate credit instruments of companies trading at significant discounts to their value at issuance or obliged (par value) at maturity as a result of either formal bankruptcy proceeding or financial market perception of near term proceedings.

Investments in **emerging markets** can be more volatile. The normal risks of investing in foreign countries are heightened when investing in emerging markets. In addition, the small size of securities markets and the low trading volume may lead to a lack of liquidity, which leads to increased volatility. Also, emerging markets may not provide adequate legal protection for private or foreign investment or private property.

The price of **equity securities** may rise, or fall because of changes in the broad market or changes in a company's financial condition, sometimes rapidly or unpredictably. These price movements may result from factors affecting individual companies, sectors or industries, or the securities market as a whole, such as changes in economic or political conditions. Equity securities are subject to "stock market risk" meaning that stock prices in general may decline over short or extended periods of time.

Equity market neutral strategies employ sophisticated quantitative techniques of analyzing price data to ascertain information about future price movement and relationships between securities. Such strategies for purchase and sale. Equity Market Neutral Strategies typically maintain characteristic net equity market exposure no greater than 10% long or short.

Global macro strategies trade a broad range of strategies in which the investment process is predicated on movements in underlying economic variables and the impact these have on equity, fixed income, hard currency and commodity markets.

International investing involves a greater degree of risk and increased volatility. Changes in currency exchange rates and differences in accounting and taxation policies outside the U.S. can raise or lower returns. Some overseas markets may not be as politically and economically stable as the United States and other nations.

There is no guarantee that the use of **long and short positions** will succeed in limiting an investor's exposure to domestic stock market movements, capitalization, sector swings or other risk factors. Using long and short selling strategies may have higher portfolio turnover ratios. Short selling involves certain risks, including additional costs associated with covering short positions and a possibility of unlimited loss on certain short sale positions.

Merger arbitrage strategies which employ an investment process primarily focused on opportunities in equity and equity related instruments of companies which are currently engaged in a corporate transaction.

Mid-capitalization investing typically carries more risk than investing in well-established "blue-chip" companies. Historically, mid-cap companies' stock has experienced a greater degree of market volatility than the average stock.

Price to forward earnings is a measure of the price-to-earnings ratio (P/E) using forecasted earnings. **Price to book value** compares a stock's market value to its book value. **Price to cash flow** is a measure of the market's expectations of a firm's future financial health. **Price to dividends** is the ratio of the price of a share on a stock exchange to the dividends per share paid in the previous year, used as a measure of a company's potential as an investment.

Real estate investments may be subject to a higher degree of market risk because of concentration in a specific industry, sector or geographical sector. Real estate investments may be subject to risks including, but not limited to, declines in the value of real estate, risks related to general and economic conditions, changes in the value of the underlying property owned by the trust and defaults by borrower.

Relative Value Strategies maintain positions in which the investment thesis is predicated on realization of a valuation discrepancy in the relationship between multiple securities.

Small-capitalization investing typically carries more risk than investing in well-established "blue-chip" companies since smaller companies generally have a higher risk of failure. Historically, smaller companies' stock has experienced a greater degree of market volatility than the average stock.

The Market Insights program provides comprehensive data and commentary on global markets without reference to products. Designed as a tool to help clients understand the markets and support investment decision-making, the program explores the implications of current economic data and changing market conditions.

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Unless otherwise stated, all data are as of January 31, 2019 or most recently available.

Guide to the Markets – U.S.

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Cyber Crimes, Dark Web and Scams

Stefanie Lawless

Stefanie Lawless
Security Administrator
Morrison, Brown, Argiz & Farra, LLC

As the senior security representative, managed all facets of Information Security globally across 11 offices and over 700 users, implementing the firm's first ever security program to include creation of policies, procedures and standards.

- Launched a three-year strategic security plan, including gap analysis and risk assessments, aligned plan with corporate goals and successfully accomplished 100% of goals outlined within the first two years.
- Oversaw and coordinated all IT Security projects, to include budget and acquisition, researching emerging technologies and identifying use cases for including new technology into the organization security profile; successfully completed multiple large-scale projects to include the implementation of SIEM, DLP, and vulnerability management systems.
- Directed audits on Information Technology, operating system platforms and operating procedures in accordance with NIST 800-53, ISO 27001 and SSAE established standards for efficiency, accuracy, security and risk mitigation resulting in the successful completion of multiple SSAE 16 examinations.
- Conducted threat and risk assessments in accordance with NIST 800-53 to assess business & technology risks within the current and proposed operating models, recommended mitigation efforts and tracked completion.
- Facilitated process improvement while monitoring security vulnerabilities and discussing action items with system administrators; improved vulnerability mitigation by 31%.
- Interpreted federal, state and international regulations as they apply to information systems, practices and procedures and made recommendations to ensure firm compliance; to include GDPR readiness assessments.
- Creation and deployment of a comprehensive Security Awareness program increasing user awareness and improving the security climate of the firm.
- Developed key metrics for measuring and improving the effectiveness of the overall Information Security Program and reported to Senior Executives.



The Dark Web and Cyber Crime

Stefanie Lawless, CISSP, CISM
Information Security Manager, MBAF



Agenda

- Layers of the Web
- Types of cyber crime
- How it works
- Navigating the Dark Web
- What this means
- What you can do

Layers of the World Wide Web



Layers of the World Wide Web

- The internet is commonly divided into three distinct layers
 - Surface Web
 - Deep Web
 - Dark Web
- The Deep Web and Dark Web are often used interchangeably but represent two distinctly different factions of the internet.

The Surface Web

- Also called the Visible Web, Indexed Web, Indexable Web, or Lightnet
- This is the portion of the internet that is available, indexed, and searchable by standard web engines such as Google, Yahoo, and Bing.
- Accounts for only 4% of all Web traffic.
 - Of that 4%, Google only indexes about 16% of the Surface Web
 - Most searches provide less than 0.05% of the information that exist



The Deep Web

- The Deep Web is the portion of the Web that is not indexed or searchable; accounts for 90% of the Web.
- Sites are password protected and require special access to view them.
- Some examples of Deep Web sites include:
 - Your email account
 - DropBox
 - Library databases that require a login
 - iCloud account



The Dark Web

- Commonly referred to as DarkNets, the Dark Web makes up 6% of the Web traffic.
- Only accessible via tor browsers or special software programs.
 - The Onion Router
 - Most common access points for the Dark Web.
 - Reroutes signals to over 6,000 servers to hide activity
 - Nearly impossible for law enforcement to track
 - Utilizes .onion instead of .com
 - Large underground marketplace for hackers, terrorist, pedophiles, and gangsters.





Illegal Services

Illegal Services

- Things you can buy on the Dark Web
 - Drugs
 - Prescription drugs
 - Illegal drugs for
 - Individual use
 - Distribution
 - Counterfeit Currency
 - For \$25 USD you can get \$2500 in counterfeit dollars
 - Forged Papers
 - Passports, driver's licenses, college diplomas and more.
 - Average price for a driver's license cost approximately \$200
 - Average price for a template to make your own passport, complete with instructions, less than \$15

Illegal Services

- Weapons
 - Firearms, ammunition, grenades, and in some instances bomb making kits
- Hitmen
 - Silk Road, a popular Darknet marketplace, advertised services for murder among other things
 - Accept bitcoin as payment and provide photographic proof that the services were rendered
- Human Organs

Illegal Services

- Data dumps
 - Equifax
 - Ashley Madison
 - Target
 - Yahoo
- Cyber Crime

Types of Cyber Crime

Types of Cyber Crime

- Malware
 - The demand for malware creation is three times larger than the supply
 - Most common malware available:
 - Cryptominers
 - Hacking utilities
 - Botnet malware
 - Remote Access Trojans
 - Ransomware

Types of Cyber Crime

- Hacker for Hire Request
 - Find site vulnerabilities
 - Obtain email passwords
 - Hacking social network accounts
 - Hacking email accounts
- Some groups, such as China's Hidden Lynx group, claim they have over 100 professional cyber thieves
 - Responsible for hacks at Google and Adobe among others

Types of Cyber Crime

- Hacker for Hire Request
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Types of Cyber Crime

- Remote Access Trojans
 - Allow hackers to take full remote control of a victims computer.
 - Logs keystrokes
 - Allows access to private files in order to commit identity theft
 - Webcam spying
- Password cracking tools
 - Special tools designed to brute force passwords
- Password list
 - Passwords accumulated through breaches.

Types of Cyber Crime

- Crime call centers
 - Sellers will often take on multiple roles for the right fee
 - Job references
 - Educational references
 - Initiate wire transfers
 - Unblock hacked accounts
 - Tech support
 - Calls cost around \$10 per call

How it works...

How it works

- Shady Web-Hosting Services
 - Web host in some countries do not:
 - Limit content
 - Learn customer's identity
 - These web host also:
 - Accept anonymous bitcoin payments
 - Ignore subpoena requests from law enforcement

How it works

- Anonymous Payments Systems
 - Allow criminals to keep their identities hidden while performing illegal activities
 - Bitcoin
 - Darkcoin
 - Liberty Reserves payment system

How it works

- Cloud Computing Services
 - Utilizing popular cloud service providers such as Amazon and Microsoft Azure, means malicious traffic is less likely to be blocked.
 - 16% of the world's malware and cyberattack distribution was noted to have originated in Amazon Cloud Services

Navigating the Dark Web

Navigating dark waters

- Secret Search Engines
 - Grams search engine
 - DuckDuckGo
 - Torch
- Criminal Wikis
 - Sites listed by category (Viruses, Hacker tools, Drugs, Weapons)
- Hidden Chatrooms
 - Invitation only chatrooms and forums
 - Used to vouch for buyers
 - Mostly used with extremely felonious material

What this means

What this means

- You don't have to be an expert to hack a system anymore.
- Less skilled criminals can buy all the tools they need to hack your system from phishing email templates and password crackers, to special tool kits to compromise servers and dump data from them.
- If your organization is hacked, your data will most likely end up on the Dark Web.

What you can do

What you can do?

- Make every possible effort to keep your organization and your data secure by following a few easy steps
 - Practice safe clicking
 - Be mindful with attachments
 - Watch what you download
 - Practice good password hygiene
 - Keep your system updated
 - Watch where you connect

Practice Safe Clicking

- Do not click any link that you can't verify
- If you are in doubt ask the sender for more information about the validity of the link
- Practice hovering your mouse over the link and inspecting the URL
- Inspect sites that ask for your username and password
 - Ensure they are using HTTPS

Be mindful with attachments

- Beware of email or attachments from unknown people, or with a strange subject line
- Never open an attachment you weren't expecting
- Never open an attachment if you don't know the sender

Watch what you download

- Do not download unfamiliar software off the internet, even if it looks useful
- Do not use peer sheering sites, or torrent sites, to download software
 - Most software contains spyware
- Obtain software from reputable sources

Practice good password hygiene

- Make sure your password adheres to company standards
- The longer the password the harder it is to crack
- Avoid using common phrases or dictionary words
- Recommend passphrases
 - horsebatterystaplechair

Keep your system updated

- Patches can be annoying – we all know that – but they exist for a reason
 - Always update as soon as possible
 - Patches provide protections against the most recent security vulnerabilities
 - New vulnerabilities are a lucrative target for hackers. They prey on the fact that an end user has not updated their system.
- Microsoft patches are released the second Tuesday of each month

Watch where you connect

- Only connect to trusted networks
- Untrusted networks are just that, untrusted
 - Wi-Fi at Starbucks
 - Wi-Fi at a hotel
 - If the hotel Wi-Fi has the same password for every room, it is just as insecure as if there were no password
- Always use a VPN to connect back to your organization to complete work assignments





**Hope you enjoyed this
presentation**

Thank you



Top 20 Cloud Issues & Challenges in 2019

Avani Desai, CISSP, CISA, CIPP, CCSK

Avani Desai
President
Schellman & Company Inc

Avani Desai is the President at Schellman. Avani has more than 15 years of experience in IT attestation, risk management, compliance and privacy. Avani's primary focus is on emerging healthcare issues and privacy concerns for organizations. Named as one of the 2017 Global Leaders in Consulting by Consulting Magazine she has also been featured and published in the ISSA Journal, ITSP Magazine, ISACA Journal, Information Security Buzz, Healthcare Tech Outlook, and many more.



Top 20 Cloud Issues & Challenges in 2019

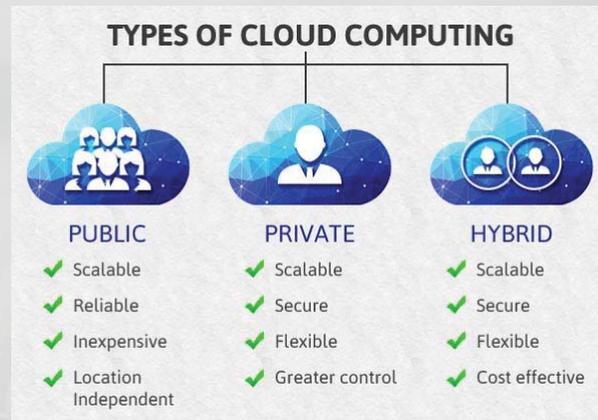
Data Security Concerns

- Viruses
- Hacks
- Bifurcation of data



Selecting a Cloud Set-Up

- Dedicated
- Private
- Public
- Hybrid



Monitoring

- Real-time
 - Frequency
 - Location
 - Industries

Data Ownership

- Contracting
- Country Privacy Laws
- Breaches
 - Notification
 - Fees

Reliability on New Technology

- Integration
- Stakeholders
- Implementation

Dependency

- Uptime
- CPU Usage
- Reliability
- Service Level Agreements
- Policies
- Provision of Compensation

Corporate Culture

- Core data outsourced
 - Control
 - Accessibility
- Risk averse

Cost

- Bandwidth
- Training
- Infrastructure

Knowledge/Expertise

- Experienced Staff
- Tools
- Pre-Post Disaster

Consumption Basis Service Charges

- On-demand services
- Budgets
- Forecasting/Trending

Threat Risk

- CSP's are targets
- Contract wording
- SLA
- Table top exercises

Unauthorized Service Providers

- Due Diligence
- Reference Checks
- Vendor Management
- Termination clauses

Data Location

- Location of servers
- Movement of data
- Cross border

Recovery/Disposal

- Integrated data
- Back up and mirrored data
- SLA
- Return of data procedures

Data Portability

- Contract wording
- Switching costs
- Restraints

Cloud Management

- IT team
- Integration with on premise
- Changes to infrastructure or technology

Governance/Control

- Shadow IT
- Policies/Procedures

Compliance

- 3rd Party Audits
 - SOC
 - PCI
 - ISO
 - FedRAMP
 - Privacy (i.e., GDPR)

Vendor Lock In

- Moving Workloads
 - Cost
 - Resources
 - Possibility

Immature Technology

- Artificial Intelligence
- Virtual Reality
- Advanced Big Data
 - Performance
 - Usability
 - Reliability



Revenue Recognition - The Aftermath

Anne Marie Hicks, CGMA, CPA

Anne Marie Hicks, CPA, CGMA
Controller
CAE USA, Inc

Anne Marie is the Controller for CAE USA Inc and CAE (US) Inc (the US Holding Parent); and is the Subject Matter Expert for US Defense Contract Accounting compliance for affiliates of CAE Inc (Ultimate Parent). In her role, Anne Marie oversees the back office accounting and financial statement reporting; design and implement controls for compliance with US Federal Acquisition Regulations, US Cost Accounting Standards, US Defense Acquisition Regulation Supplement, US GAAP, IFRS and SOX; assist with mergers and acquisitions due diligence efforts; and integrate newly acquired entities.

Anne Marie has been with the CAE USA Inc for over 25 years and close to 35 years in Aerospace and Defense Contract Accounting. She is a graduate of the University of South Florida, holding Bachelor degrees in Accounting and Management. Anne Marie is a member of the AICPA, member of the FICPA, an active member of the 2018 CPAs in Industry Conference Committee, 2018 Accounting and Business Show Committee, 2018 FICPA MEGA CPE Conference Committee and participate in the FICPA CFO and Controller Leadership Roundtable

REVENUE RECOGNITION

the Aftermath

CPA'S IN INDUSTRY CONFERENCE

MARCH 21, 2019



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AGENDA

- REVENUE RECOGNITION STANDARD ASC 606
- ESTABLISHING PROPER CONTROLS
- CONSIDERATIONS IN CONTRACT NEGOTIATIONS
- EFFECT OF CHANGES IN REVENUE RECOGNITION TO FINANCIAL RATIOS
- FINANCIAL STATEMENT DISCLOSURES

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POLLING QUESTION

HAVE YOU TRANSITIONED FROM ASC 605 TO ASC 606?

- a. Yes
- b. No

For those answering no, is your transition in process?

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ASC 606 REVENUE FROM CONTRACTS WITH CUSTOMERS

What were
people saying
before
adoption?

- Denise Lugo of Bloomberg says, “Public companies—including Amazon.com Inc. and Microsoft Corp.—are gearing up for the most historic accounting changes to hit U.S. capital markets in decades.”
- Denis Pombriant of Beagle Research says, “We have before us a perfect accounting storm, the likes of which has not been seen since the late 1990s.”
- Josh Paul, Head of Technical Accounting & SEC Reporting at Alphabet says, “Hopefully, fear is what you’re feeling now.”

Forbes.Tien.Tzuo August 10, 2017

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ASC 606 REVENUE FROM CONTRACTS WITH CUSTOMERS

5 STEPS...

1. Identify the contract. What is it that you're promising to do for the customer?
2. Identify the performance obligations. Break the contract into its separate components.
3. Determine the transaction price. What's your best estimate of what you expect to receive from the customer?
4. Allocate the transaction price to the separate performance obligations.
5. Recognize the revenue over time or at a point in time.

Disclosure...

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DETERMINE REVENUE RECOGNITION METHOD FOR GOODS

POINT IN TIME

OVER TIME

- a) Does the customer have the legal right to restrict the seller from transferring the work-in-progress to another customer during construction?
- b) Does the customer control the underlying asset as the entity creates or enhances it?
- c) Does the good have an alternative use? (e.g. no alternative customer or seller would incur significant cost to rework the asset to sell to an alternative customer)
- d) Does the contract include a termination for convenience right to the customer without penalty? Does the penalty seek to recover cost plus a reasonable margin?
- e) Does legal title and control transfer at delivery or customer acceptance upon installation?
- f) Does the contract provide a buy-back option to the customer? From the customer's point of view, is the buy-back price less than fair market value at the time of buy-back?

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DETERMINE REVENUE RECOGNITION METHOD FOR SERVICES

POINT IN TIME

- a) Does the customer simultaneously receive and consume the benefits provided by seller's performance as performed?
- b) Does the seller's performance create or enhance an asset that the customer controls as the asset is created or enhanced?
- c) Does the contract include a termination for convenience right to the customer without penalty? Does the penalty seek to recover cost plus a reasonable margin?

OVER TIME

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REVENUE RECOGNITION METHOD

POINT IN TIME

- POINT IN TIME – recognition is in the period the performance obligation is satisfied
 - Goods are produced and rights of ownership transfer
 - Goods are transferred and title passes
 - Goods are sold (retail)

OVER TIME

- OVER TIME
 - Percentage of Completion – based on either an input or output measure
 - Input measures include cost incurred to estimated cost at completion, hours incurred to estimated hours at completion
 - Output measures include number of units produced, number of machine hours consumed
 - Straight-line – recognized equally over the period of performance
 - Right-to-Invoice – recognized at the time the customer agrees the earning process is complete for some portion (cost plus efforts, time & material efforts)

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POLLING QUESTION

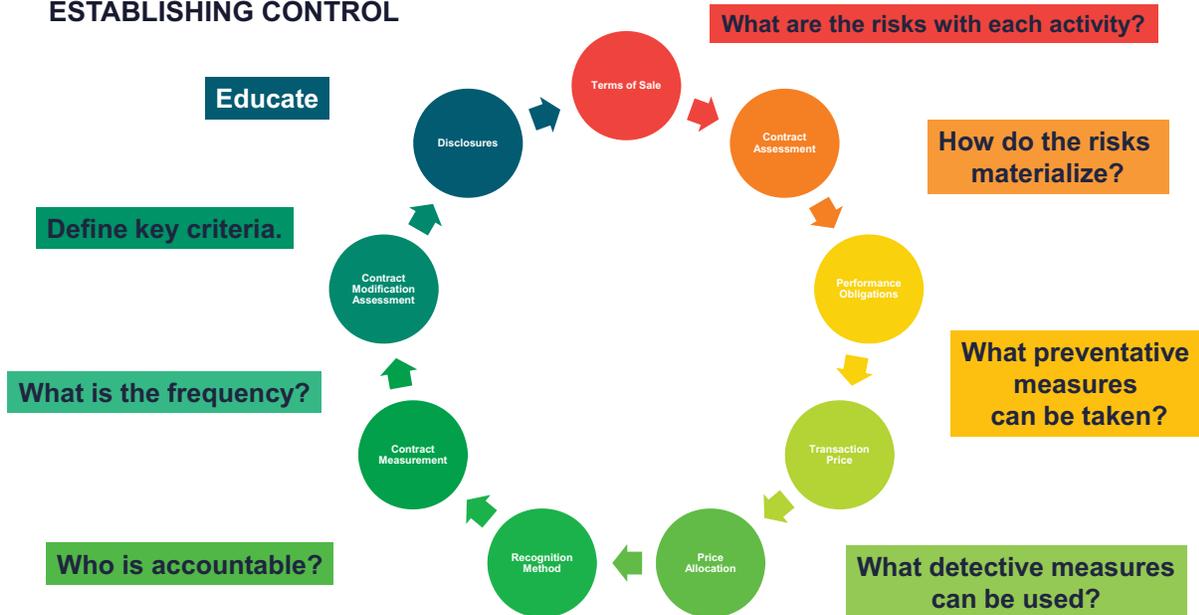
DO YOU PREDOMINANTLY RECOGNIZE REVENUE AT A POINT IN TIME OR OVER TIME?

- a. Point in Time
- b. Over Time (Percentage of Completion, Right to Invoice or Straight-line)
- c. Both Over Time and Point in Time (similarly distributed)

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ESTABLISHING CONTROL



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INTERNAL CONTROLS

- Whether or not you are subject to Sarbanes-Oxley, internal controls should be **well documented and effective at preventing, detecting and mitigating risk**. – This is especially true over Revenue...
- Revenue affects the managerial process in critical activities such as **budgeting, compensation, working capital, debt covenant compliance, governance and legal analysis**.
- Income tax considerations – revenue transition is **likely to impact deferred taxes and consideration of new tax laws**
- Disclosure requirements – **who receives or has access** to these disclosures; how much competitive information can be gathered from these disclosures (disaggregation of revenue) – whether you are privately held or publicly held

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POLLING QUESTION

DO YOU PUBLISH FINANCIAL RESULTS OR FINANCIAL DATA ON SERVICES SUCH AS DUN & BRADSTREET?

- a. YES, Balance Sheet and Income Statement
- b. YES, Limited Financial Data
- c. NO

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CONTRACT NEGOTIATIONS

Considerations

- **Payment terms** – does the contract contain a financing component
- **Customer's rights to terminate** – does the penalty for termination cover the cost of performance to date of termination plus a fair and reasonable profit
- **Performance Obligations** – are there imbedded performance obligations, such as free training, free upgrades, discounted follow-on orders
- **Transfer of Rights and Benefits** – does the contract clearly specify or is it reasonably determinable
- **Price** – is it determinable or subject to contingencies
- **Penalties** – does the contract include performance or delivery penalties, is the criteria for penalty clearly defined, is the penalty amount clearly defined
- **Practice** – is there an unwritten practice the customer is likely to expect in performance of the contract;

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COMMON METRICS LENDERS USE IN DEBT COVENANTS

- Debt / EBITDA
- Debt / (EBITDA – Capital Expenditures)
- Interest Coverage (EBITDA or EBIT / Interest)
- Debt / Equity
- Debt / Assets
- Total Assets

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EXAMPLE

ASC 605			ASC 606		
Current Assets			Current Assets		
Cash	2,750,000		Cash	2,750,000	
Trade Accounts Receivable	8,250,000		Trade Accounts Receivable	7,500,000	
Contract Asset - ST	15,000,000		Contract Asset - ST	-	
Inventory	400,000		Inventory	14,125,000	
Prepaid Expenses	2,500,000		Prepaid Expenses	2,500,000	
Other Current Assets	1,000,000		Other Current Assets	1,000,000	
Total Current Assets	29,900,000		Total Current Assets	27,875,000	
Fixed Assets	8,500,000		Fixed Assets	8,500,000	
Accumulated Depreciation	(2,000,000)		Accumulated Depreciation	(2,000,000)	
Fixed Assets, net	6,500,000		Fixed Assets, net	6,500,000	
Contract Assets - LT	-		Contract Assets - LT	-	
Other Long Term Assets	975,000		Other Long Term Assets	1,000,000	
Total Assets	37,375,000		Total Assets	35,375,000	
Revenue	110,000,000		Revenue	100,000,000	
COGS	88,000,000		COGS	80,000,000	
Gross Margin	22,000,000		Gross Margin	20,000,000	
Selling, General & Administrative	16,500,000		Selling, General & Administrative	16,500,000	
Operating Income	5,500,000		Operating Income	3,500,000	
Interest Expense	1,200,000		Interest Expense	1,200,000	
Taxes	903,000		Taxes	483,000	
Net Income	3,397,000		Net Income	1,817,000	
Current Liabilities			Current Liabilities		
Trade Accounts Payable	3,621,000		Trade Accounts Payable	3,621,000	
Accrued Wages, Benefits and Expenses	3,290,000		Accrued Wages, Benefits and Expenses	3,290,000	
Contract Liabilities ST	1,100,000		Contract Liabilities ST	1,100,000	
Other Current Liabilities	903,000		Other Current Liabilities	483,000	
Loans - current portion	-		Loans - current portion	-	
Total Current Liabilities	8,914,000		Total Current Liabilities	8,494,000	
Contract Liabilities LT	-		Contract Liabilities LT	-	
Loans Payable	15,000,000		Loans Payable	15,000,000	
Total Liabilities	15,000,000		Total Liabilities	15,000,000	
Shareholders' Equity			Shareholders' Equity		
Share Capital	1,000		Share Capital	1,000	
Surplus Capital/APIC	9,999,000		Surplus Capital/APIC	9,999,000	
Retained Earnings	3,461,000		Retained Earnings	1,881,000	
Total Shareholders' Equity	13,461,000		Total Shareholders' Equity	11,881,000	
Total Liabilities & Shareholders' Equity	37,375,000		Total Liabilities & Shareholders' Equity	35,375,000	

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EFFECT OF CHANGES IN REVENUE RECOGNITION TO FINANCIAL RATIOS

RATIO	ASC 605	ASC 606	
Debt / EBITDA	3.99	6.44	Unfavorable
Debt / (EBITDA – Capital Expenditures)	4.35	7.36	Unfavorable
Interest Coverage (EBITDA or EBIT / Interest)	5.00	3.33	Unfavorable
Debt / Equity	1.78	2.17	Unfavorable
Debt / Assets	0.64	0.68	Unfavorable
Total Assets	37.4M	37.6M	

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DISCLOSURES

KEY ELEMENTS

- Disaggregation of revenues by category
- Reconciliation of contract balances
- Remaining performance obligations
- Costs to obtain or fulfill a contract
- Significant judgements
- Opening and closing balances of receivables, contract assets and contract liabilities
- Revenue recognized in the period included in the opening contract liability balance
- Revenue recognized in the period from performance obligations satisfied or partially satisfied in previous periods

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FINANCIAL STATEMENT DISCLOSURES

SEC Areas of Comment during 2018

- Recognizing Revenue
 - When control transfers
 - Method of measuring progress for revenue recognized over time
 - Sales or usage-based royalty exception
- Performance Obligations
 - Identifying distinct goods or services
 - Disclosure of remaining performance obligations
 - Material rights
- Transaction Price
 - Variable consideration
 - Payments to customers
 - Significant financing Components

Interpretation and Disclosure Clarity

<https://www.pwc.com/us/en/cfo/direct/issues/revenue-recognition/sec-comments-revenue-asc-606.html>

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EXCERPTS FROM GENERAL DYNAMICS ANNUAL REPORT 2017

B. REVENUE

The majority of our revenue is derived from long-term contracts and programs that can span several years. We account for revenue in accordance with ASC Topic 606.

Performance Obligations. A performance obligation is a promise in a contract to transfer a distinct good or service to the customer, and is the unit of account in ASC Topic 606. A contract's transaction price is allocated to each distinct performance obligation and recognized as revenue when, or as, the performance obligation is satisfied. The majority of our contracts have a single performance obligation as the promise to transfer the individual goods or services is not separately identifiable from other promises in the contracts and is, therefore, not distinct. Some of our contracts have multiple performance obligations, most commonly due to the contract covering multiple phases of the product lifecycle (development, production, maintenance and support). For contracts with multiple performance obligations, we allocate the contract's transaction price to each performance obligation using our best estimate of the standalone selling price of each distinct good or service in the contract. The primary method used to estimate standalone selling price is the expected cost plus a margin approach, under which we forecast our expected costs of satisfying a performance obligation and then add an appropriate margin for that distinct good or service.

Contract modifications are routine in the performance of our contracts. Contracts are often modified to account for changes in contract specifications or requirements. In most instances, contract modifications are for goods or services that are not distinct, and, therefore, are accounted for as part of the existing contract.

Our performance obligations are satisfied over time as work progresses or at a point in time. Revenue from products and services transferred to customers over time accounted for 71% of our revenue in 2017, 72% in 2016 and 68% in 2015. Substantially all of our revenue in the defense groups is recognized over time, because control is transferred continuously to our customers. Typically, revenue is recognized over time using costs incurred to date relative to total estimated costs at completion to measure progress toward satisfying our performance obligations. Incurred cost represents work performed, which corresponds with, and thereby best depicts, the transfer of control to the customer. Contract costs include labor, material, overhead and, when appropriate, G&A expenses.

Revenue from goods and services transferred to customers at a point in time accounted for 29% of our revenue in 2017, 28% in 2016 and 32% in 2015. The majority of our revenue recognized at a point in time is for the manufacture of business-jet aircraft in our Aerospace group. Revenue on these contracts is recognized when the customer obtains control of the asset, which is generally upon delivery and acceptance by the customer of the fully outfitted aircraft.

On December 31, 2017, we had \$63.2 billion of remaining performance obligations, which we also refer to as total backlog. We expect to recognize approximately 40% of our remaining performance obligations as revenue in 2018, an additional 40% by 2020 and the balance thereafter.

Contract Estimates. Accounting for long-term contracts and programs involves the use of various techniques to estimate total contract revenue and costs. For long-term contracts, we estimate the profit on a contract as the difference between the total estimated revenue and expected costs to complete a contract and recognize that profit over the life of the contract.

Contract estimates are based on various assumptions to project the outcome of future events that often span several years. These assumptions include labor productivity and availability; the complexity of the work to be performed; the cost and availability of materials; the performance of subcontractors; and the availability and timing of funding from the customer.

The nature of our contracts gives rise to several types of variable consideration, including claims and award and incentive fees. We include in our contract estimates additional revenue for submitted contract modifications or claims against the customer when we believe we have an enforceable right to the modification or claim, the amount can be estimated reliably and its realization is probable. In evaluating these criteria, we consider the contractual/legal basis for the claim, the cause of any additional costs incurred, the reasonableness of those costs and the objective evidence available to support the claim. We include award or incentive fees in the estimated transaction price when there is a basis to reasonably estimate the amount of the fee. These

https://s27.q4cdn.com/89994678/files/doc_financials/2017/annual/2017-qr-annual-report.pdf

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EXCERPTS FROM GENERAL DYNAMICS ANNUAL REPORT 2017

estimates are based on historical award experience, anticipated performance and our best judgment at the time. Because of our certainty in estimating these amounts, they are included in the transaction price of our contracts and the associated remaining performance obligations.

As a significant change in one or more of these estimates could affect the profitability of our contracts, we review and update our contract-related estimates regularly. We recognize adjustments in estimated profit on contracts under the cumulative catch-up method. Under this method, the impact of the adjustment on profit recorded to date on a contract is recognized in the period the adjustment is identified. Revenue and profit in future periods of contract performance are recognized using the adjusted estimate. If at any time the estimate of contract profitability indicates an anticipated loss on the contract, we recognize the total loss in the period it is identified.

The impact of adjustments in contract estimates on our operating earnings can be reflected in either operating costs and expenses or revenue. The aggregate impact of adjustments in contract estimates increased our revenue, operating earnings and diluted earnings per share as follows:

Year Ended December 31	2017	2016	2015
Revenue	\$ 292	\$ 95	\$ 356
Operating earnings	323	16	271
Diluted earnings per share	\$ 0.69	\$ 0.03	\$ 0.54

While no adjustment on any one contract was material to our Consolidated Financial Statements in 2017, 2016 or 2015, the amount in 2016 was negatively impacted by a loss on the design and development phase of the AJAX program in our Combat Systems group and cost growth associated with the restart of the Navy's DDG-51 program in our Marine Systems group.

Revenue by Category. Our portfolio of products and services consists of almost 10,000 active contracts. The following series of tables presents our revenue disaggregated by several categories.

Revenue by major products and services was as follows:

Year Ended December 31	2017	2016	2015
Aircraft manufacturing, outfitting and completions	\$ 6,320	\$ 6,074	\$ 7,497
Aircraft services	1,743	1,625	1,569
Pre-owned aircraft	66	116	111
Total Aerospace	8,129	7,815	9,177
Wheeled combat and tactical vehicles	2,506	2,444	2,597
Weapons systems, armament and munitions	1,633	1,517	1,508
Tanks and tracked vehicles	1,225	994	805
Engineering and other services	585	635	733
Total Combat Systems	5,949	5,530	5,643
CAISR solutions	4,481	4,716	4,419
IT services	4,410	4,428	4,510
Total Information Systems and Technology	8,891	9,144	8,929
Nuclear-powered submarines	5,175	5,264	5,010
Surface combatants	1,043	994	1,081
Auxiliary and commercial ships	564	654	672
Repair and other services	1,222	1,160	1,269
Total Marine Systems	8,004	8,072	8,032
Total revenue	\$30,973	\$30,561	\$31,781

https://s27.q4cdn.com/89994678/files/doc_financials/2017/annual/2017-qr-annual-report.pdf

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EXCERPTS FROM GENERAL DYNAMICS ANNUAL REPORT 2017

Revenue by contract type was as follows:

	Aerospace	Combat Systems	Information Systems and Technology	Marine Systems	Total Revenue
Year Ended December 31, 2017					
Fixed-price	\$7,479	\$5,090	\$3,943	\$4,808	\$21,320
Cost-reimbursement	–	823	4,143	3,186	8,152
Time-and-materials	650	36	805	10	1,501
Total revenue	\$8,129	\$5,949	\$8,891	\$8,004	\$30,973
Year Ended December 31, 2016					
Fixed-price	\$7,208	\$4,629	\$4,251	\$4,857	\$20,945
Cost-reimbursement	–	865	4,084	3,204	8,153
Time-and-materials	607	36	809	11	1,463
Total revenue	\$7,815	\$5,530	\$9,144	\$8,072	\$30,561
Year Ended December 31, 2015					
Fixed-price	\$8,583	\$4,776	\$4,066	\$5,334	\$22,759
Cost-reimbursement	–	838	4,029	2,685	7,552
Time-and-materials	594	29	834	13	1,470
Total revenue	\$9,177	\$5,643	\$8,929	\$8,032	\$31,781

Each of these contract types presents advantages and disadvantages. Typically, we assume more risk with fixed-price contracts. However, these types of contracts offer additional profits when we complete the work for less than originally estimated. Cost-reimbursement contracts generally subject us to lower risk. Accordingly,

the associated base fees are usually lower than fees earned on fixed-price contracts. Under time-and-materials contracts, our profit may vary if actual labor-hour rates vary significantly from the negotiated rates. Also, because these contracts can provide little or no fee for managing material costs, the content mix can impact profitability.

https://s72.qcdn.com/8994578/files/doc_financials/2017/annual/2017-04-annual-report.pdf

CAE Inc. Proprietary Information and/or Confidential



EXCERPTS FROM GENERAL DYNAMICS ANNUAL REPORT 2017

Revenue by customer was as follows:

	Aerospace	Combat Systems	Information Systems and Technology	Marine Systems	Total Revenue
Year Ended December 31, 2017					
U.S. government:					
Department of Defense (DoD)	\$ 189	\$ 2,618	\$ 4,970	\$ 7,721	\$ 15,498
Non-DoD	–	92	2,755	–	2,847
Foreign Military Sales (FMS)	42	374	68	182	678
Total U.S. government	221	3,084	7,793	7,913	19,021
U.S. commercial	3,866	220	322	71	4,489
Non-U.S. government	210	2,580	810	13	3,413
Non-U.S. commercial	3,003	65	106	7	4,041
Total revenue	\$ 8,129	\$ 5,949	\$ 8,891	\$ 8,004	\$ 30,973
Year Ended December 31, 2016					
U.S. government:					
DoD	\$ 221	\$ 2,200	\$ 5,201	\$ 7,507	\$ 15,139
Non-DoD	–	81	2,735	8	2,824
FMS	130	333	48	202	713
Total U.S. government	351	2,614	7,984	7,717	18,676
U.S. commercial	3,501	297	367	329	4,494
Non-U.S. government	496	2,520	621	26	3,663
Non-U.S. commercial	3,457	109	172	–	3,738
Total revenue	\$ 7,815	\$ 5,530	\$ 9,144	\$ 8,072	\$ 30,561
Year Ended December 31, 2015					
U.S. government:					
DoD	\$ 98	\$ 2,225	\$ 5,047	\$ 7,324	\$ 14,694
Non-DoD	–	93	2,736	12	2,831
FMS	6	262	38	127	453
Total U.S. government	104	2,590	7,821	7,463	17,878
U.S. commercial	4,334	242	305	541	5,502
Non-U.S. government	560	2,714	556	26	3,860
Non-U.S. commercial	4,179	87	165	–	4,411
Total revenue	\$ 9,177	\$ 5,643	\$ 8,929	\$ 8,032	\$ 31,781

Contract Balances. The timing of revenue recognition, billings and cash collections results in billed accounts receivable, unbilled receivables (contract assets), and customer advances and deposits (contract liabilities) on the Consolidated Balance Sheet. In our defense groups, amounts are billed as work progresses in accordance with agreed-upon contractual terms, either at periodic intervals (e.g., biweekly or monthly) or upon achievement of contractual milestones. Generally, billing occurs subsequent to revenue recognition, resulting in contract assets. However, we sometimes receive advances or deposits from our customers, particularly on our international contracts, before revenue is recognized, resulting in contract liabilities. These assets and liabilities are reported on the Consolidated Balance Sheet on a contract-by-contract basis at the end of each reporting period. In our Aerospace group, we generally receive deposits from customers upon contract execution and upon achievement of contractual milestones. These deposits are liquidated when revenue is recognized. Changes in the contract asset and liability balances during the year ended December 31, 2017, were not materially impacted by any other factors.

Revenue recognized in 2017, 2016 and 2015 that was included in the contract liability balance at the beginning of each year was \$4.3 billion, \$4.2 billion and \$6 billion, respectively. This revenue represented primarily the sale of business-jet aircraft.

https://s72.qcdn.com/8994578/files/doc_financials/2017/annual/2017-04-annual-report.pdf

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QUESTIONS?

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Our vision is to be the recognized global
training partner of choice
to enhance safety, efficiency and readiness.

Recovering from a Category 5 Hurricane, What Next?

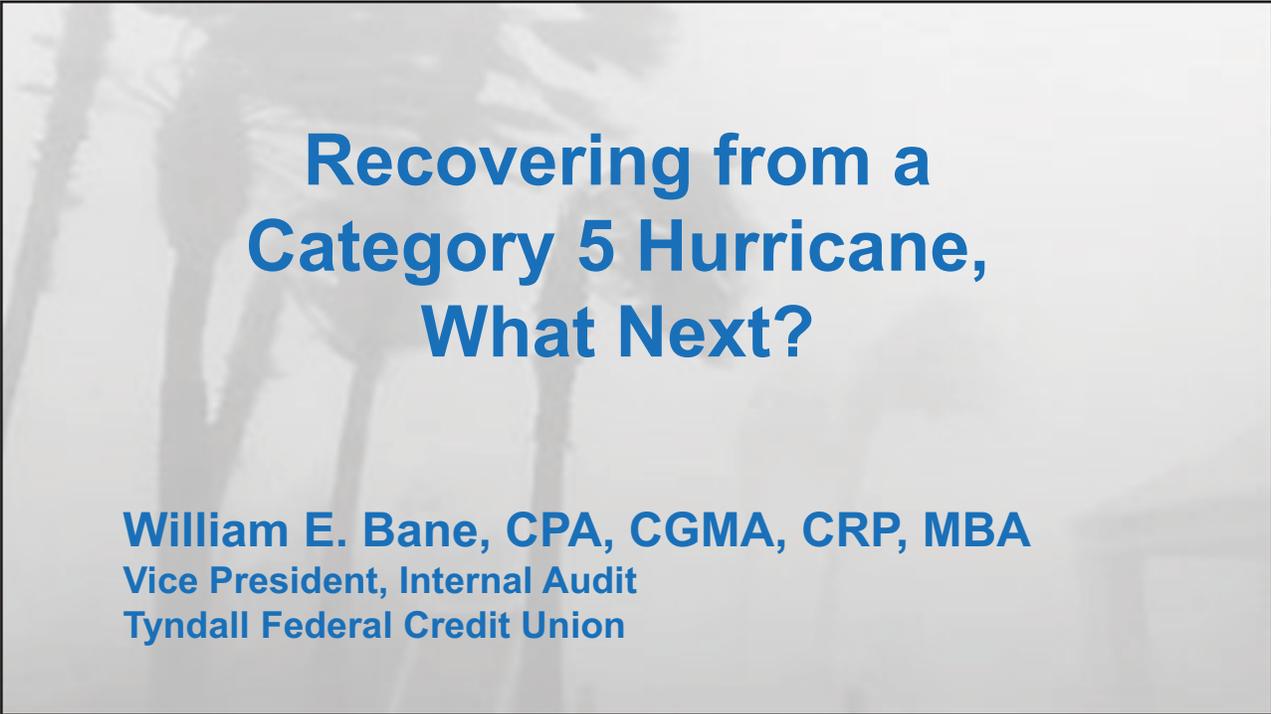
William E. Bane, CPA, CGMA, CPA, MBA

William Bane, CPA, CGMA, CPA, MBA
Vice President of Internal Audit
Tyndall Federal Credit Union

William Bane is a CPA and Vice President of Internal Audit with a regional federal credit union, Tyndall Federal Credit Union, headquartered in Panama City, Florida. Mr. Bane has over 30 years' experience in internal audit and enterprise risk management within the financial services industry. Prior to moving to the Florida Panhandle in 2017, Mr. Bane served as an internal audit and enterprise risk management financial services consultant with the national consulting and advisory firm, Strategic Risk Associates that specialized in the banking and financial services industry. He was the Senior Vice President and Director of Enterprise Risk Management and a previous Director of Internal Audit for a regional community bank holding company, First Community Bancshares, Inc., headquartered in Virginia. He also serviced as Regional Accounting Director and Auditing Officer for Banc One West Virginia Corporation. Mr. Bane was introduced to the banking industry through his six years on the audit team as Audit Supervisor with the Huntington, West Virginia based certified public accounting firm of Trainer, Wright & Paterno, CPAs. Mr. Bane served as guest speaker for the Virginia Association of Community Banks in Richmond, Virginia from 2004 through 2016 and various CPA society chapters in Virginia and West Virginia. Mr. Bane is a Certified Risk Professional through Bank Administration Institute in Chicago, Illinois. He is a member of the Florida Institute of CPAs and serves as the CPE Liaison for the Miracle Strip Chapter in Panama City, Florida.



Recovering from a Category 5 Hurricane WHAT NEXT?



Recovering from a Category 5 Hurricane, What Next?

William E. Bane, CPA, CGMA, CRP, MBA
Vice President, Internal Audit
Tyndall Federal Credit Union

Hurricane Michael

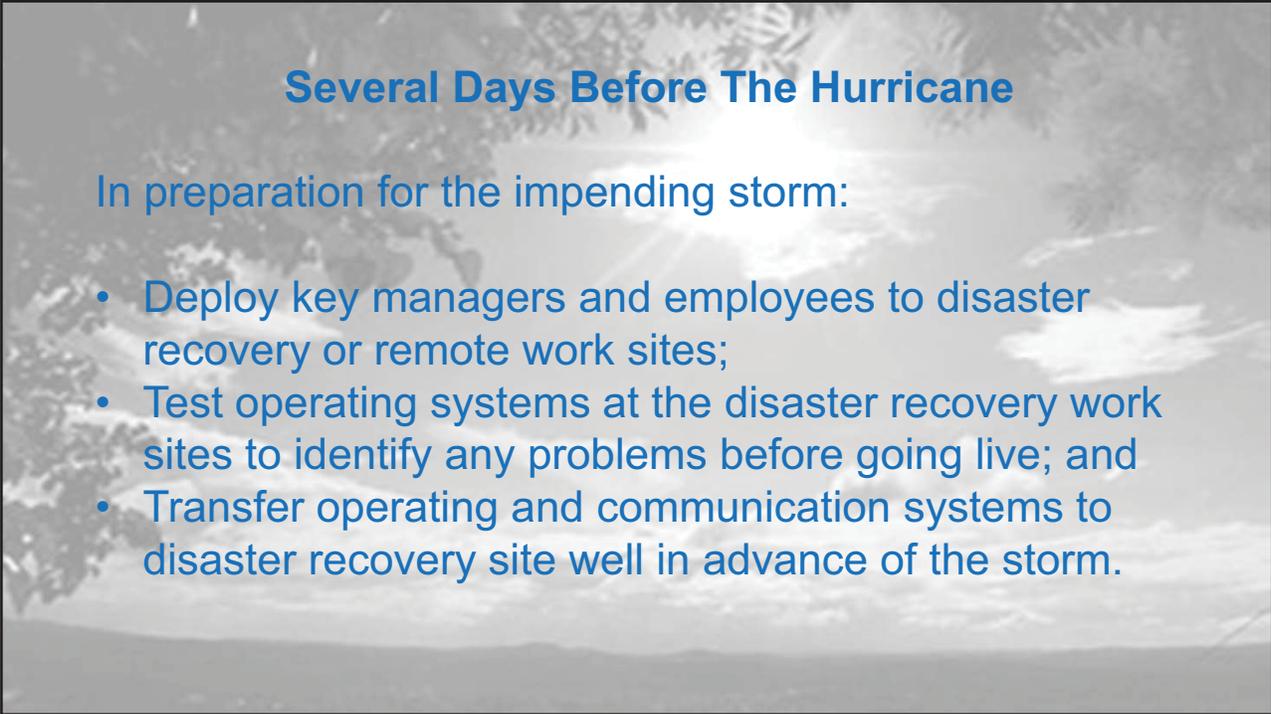
October 10, 2018



Why Residents/Businesses Were Not Prepared

Why Residents/Businesses Not Prepared for Hurricane Michael

- Region had not experienced a storm of this magnitude;
- Significant percentage of Bay County/Panama City residents relocated into the area;
- Past hurricanes and tropical storms originally targeted for Panama City changed course before landfall; and
- Meteorologists exaggerated coverage of prior storms that never materialized or became very severe.



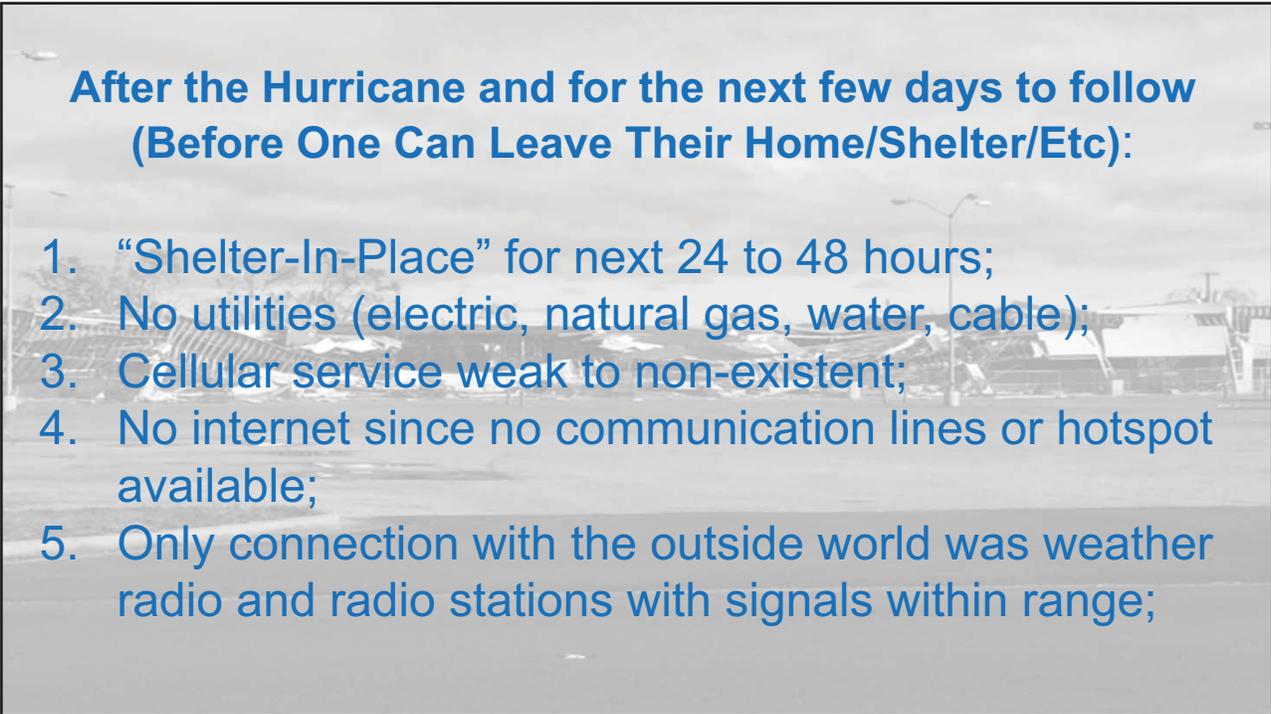
Several Days Before The Hurricane

In preparation for the impending storm:

- Deploy key managers and employees to disaster recovery or remote work sites;
- Test operating systems at the disaster recovery work sites to identify any problems before going live; and
- Transfer operating and communication systems to disaster recovery site well in advance of the storm.

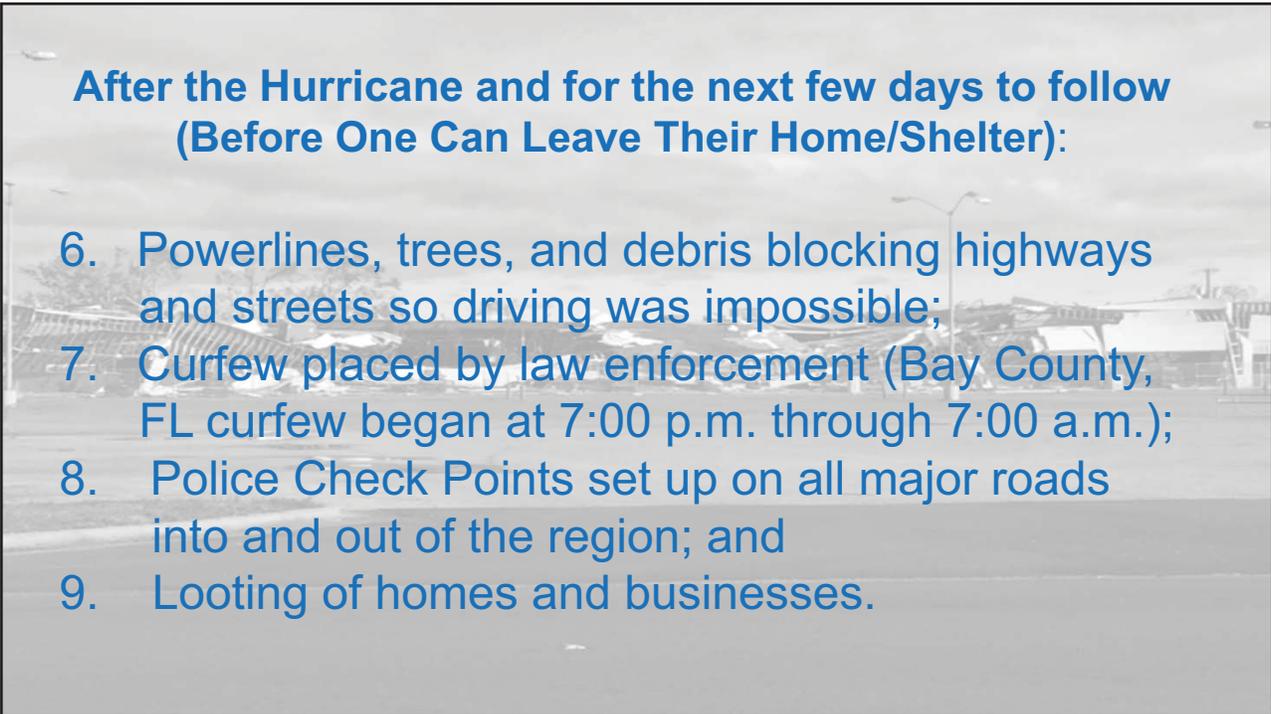


**After A
Category 5 Hurricane
What's Next, What's Ahead?**



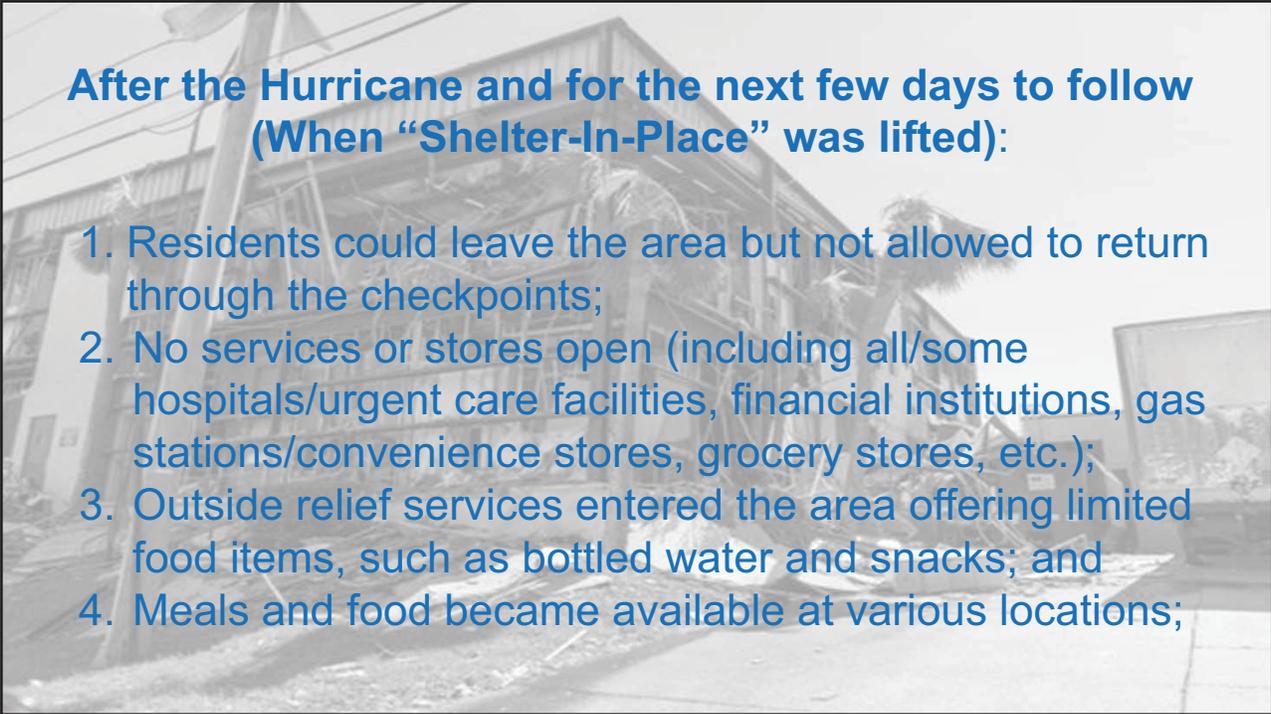
**After the Hurricane and for the next few days to follow
(Before One Can Leave Their Home/Shelter/Etc):**

1. “Shelter-In-Place” for next 24 to 48 hours;
2. No utilities (electric, natural gas, water, cable);
3. Cellular service weak to non-existent;
4. No internet since no communication lines or hotspot available;
5. Only connection with the outside world was weather radio and radio stations with signals within range;



**After the Hurricane and for the next few days to follow
(Before One Can Leave Their Home/Shelter):**

6. Powerlines, trees, and debris blocking highways and streets so driving was impossible;
7. Curfew placed by law enforcement (Bay County, FL curfew began at 7:00 p.m. through 7:00 a.m.);
8. Police Check Points set up on all major roads into and out of the region; and
9. Looting of homes and businesses.



**After the Hurricane and for the next few days to follow
(When “Shelter-In-Place” was lifted):**

1. Residents could leave the area but not allowed to return through the checkpoints;
2. No services or stores open (including all/some hospitals/urgent care facilities, financial institutions, gas stations/convenience stores, grocery stores, etc.);
3. Outside relief services entered the area offering limited food items, such as bottled water and snacks; and
4. Meals and food became available at various locations;



**After the Hurricane
Services Available Five to Six Days After Storm**

Limited services at reduced hours:

- Financial institutions (drive-thru; check cashing/withdrawal services);
- Sams/Walmart (gasoline/groceries);
- Few convenience stores/gas stations (gasoline – cash only); and
- Food trucks (cash only).





Factors Impacting Business Restoration

Financial – Accessibility of funds to recover and restore the business:

- Company reserves;
- Existing lines of credit;
- Access to new credit resources; and
- Insurance proceeds.



Factors Impacting Business Restoration

Facilities – Access to company owned or rented facilities to restore business operations:

- Existing company locations within the disaster zone;
- Existing company locations outside of the disaster zone;
- Area rental space availability; and
- Use of multiple remote locations.



Factors Impacting Business Restoration

Equipment – Accessibility to necessary business equipment required to restore business operations:

- Salvage and utilize existing equipment;
- Transfer and utilize equipment from remote locations; and
- Rent/purchase new equipment.



Factors Impacting Business Restoration

Human Resources – Availability of company employees to return to work onsite or remotely:

- Family security/providing for family;
- Housing;
- Covering basic needs (groceries, healthcare);
- Transportation;
- Returning from evacuation; and
- Decision not to return.



Factors Impacting Business Restoration

Contractors – Availability of engineering, environmental, and construction contractors to begin restoration of the company’s facilities:

- Engineering
- Environmental
- Construction



Factors Impacting Business Restoration

Vendors – Availability of vendors to replace equipment and supplies destroyed during the storm:

- Established vendors utilized before the storm; and
- Potential new vendors who could fulfill the company’s equipment and supplies needs.



Factors Impacting Business Restoration

Transportation – Negative impact on business restoration due to limited or nonexistent access to gasoline and debris blocked roads:

- Employee availability for work;
- Delivery of equipment and supplies; and
- Transporting supplies/materials between multiple locations.



PREPARING TO RESTORE OPERATIONS AND SERVICES

Preparing To Restore Operations and Services

Establish A Central Command Center:

This is a central location where key managers/employees will work from in planning, communicating, and executing operations restoration responsibilities.



Preparing To Restore Operations and Services

Employee Communications:

It is extremely important to communicate with employees throughout the operations recovery and restoration:

- Text messages;
- Automated telephone call messages; and
- E-mails.



A hand holding a smartphone. The screen shows an email notification with an envelope icon and the text "1 message from [unreadable]".

Preparing To Restore Operations and Services

Public and Customer Communications (Mainly for Mission-Critical Services):

It is just as important to communicate with the public and customers throughout the operations, recovery, and restoration so they know the progress of restoring services and when they will become available.

A large, multi-story building with significant structural damage and debris. The building appears to be a multi-story office or commercial building that has been severely damaged, with many windows missing and structural elements exposed.

Preparing to Restore Operations and Services

Assess Facilities Conditions:

Safety and environment of company facilities:

- a. Facilities safe for employees to enter;
- b. Engineer or environmental assessment before anyone enters facilities;
- c. Alternate facility space availability; and
- d. Mobile facility availability.





Lessons Learned from Hurricane Michael and Other Disasters

- Do not establish a business systems restoration “hot site” within the same weather pattern as the main operations facility.
- Past history of hurricanes and other disruptive weather is not indicative of the future (Hurricane Michael was unprecedented in several ways).
- Have insurance coverage reviewed for coverage gaps.



Discussion

Questions & Answers

***Private Entity Exceptions
(Little GAAP)***

Mark E. Brechbill, CPA

Mark Brechbill, CPA
Managing Director
MB Wealth Solutions, LLC and Mark Brechbill, PLLC

Mark Brechbill is the founder of MB Wealth Solutions, LLC, a business, financial and tax advisory firm specializing in transition strategies for family owned businesses. Mark is also one of the founding members of Mark Brechbill, PLLC, a certified public accounting firm primarily serving the audit, review, and compilation needs of small to mid-sized businesses in Stuart, FL and on the Treasure Coast. Mark concentrates most of his time in the firms' business and tax consulting practices, assisting with business formation and organization, purchases and sales, and reorganizations. He also sponsors and hosts a series of call-in radio programs entitled "**Treasure Coast Solutions**" that answers listeners' questions pertaining to business, financial planning, real estate, construction and community activities.

Prior to founding the firm in 1994, Mark spent over thirteen years in the banking industry, serving as Chief Operating Officer of a community bank and CFO of a \$600 million regional bank. He began his career in public accounting with Arthur Andersen & Co., in Chicago, Illinois working in the firm's banking division. He also worked with McGladrey, Hansen, Dunn & Company, (now McGladrey & Pullen), in their Peoria, Illinois office. Mark has a Bachelor of Business degree in accounting from Western Illinois University, is licensed as a CPA in Florida, and is a member of the FICPA and AICPA. Additionally, as with most CPAs, he is active in a number of civic and community programs (primarily as Treasurer).

Presentation Will Be Available
On-line After the Conference

The Evolution of Business Intelligence and Analytics Governance

Brian McGoff

Brian McGoff
Global Business Unit Executive
IBM Data Science and AI

Brian McGoff is the Global Business Unit Executive for IBM Data Science and AI. In this role Brian is focused on building strong teams and support for delivering enhanced business outcomes to clients worldwide by optimizing the use of next generation analytics, data solutions, and services.

Throughout his professional career of more than 25 years, Brian has worked to develop new strategies and solutions focused on improving operations and increasing efficiencies across multiple industries including health care, life sciences, financial services, retail and government. These roles involved working with key business technology stakeholders across Asia, ASEAN, Middle East, Africa, Europe, Australia, New Zealand, Latin America, Central America and Canada providing first-hand experience in global business and technology markets.

Brian continues to work closely with innovative clients to develop cost-effective strategies for planning and execution of their domestic and international growth goals. He is a strategic advisor to Boards of Directors and government backed economic trade groups on effective management measures, IP transfer, commercialization and emerging technology matters in health care and life sciences. Brian has been a frequent presenter, panelist and guest speaker at regional and national industry events and symposiums for over 15 years.

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1

Agenda

“84% of CxOs are concerned about the quality of the data they’re basing their decisions on.”

- Forbes Insights and KPMG

2

DATA GOVERNANCE vs. ANALYTICS GOVERNANCE

Nearly
60 percent
of organizations don't measure the annual financial cost of poor quality data.¹

But they should:

Poor data quality is also hitting organizations where it hurts—to the tune of
\$15 M
as the average annual financial cost in 2017.²

Data governance

- Availability and accuracy
- Data preparation
- Data quality, data integration, auditability, security

Analytics governance

- Authorization
- Access control
- Auditing
- Encryption Everywhere

Governance requires more than technology—it's also about people and process. Governance requires that IT and the business agree on a set of business rules, policies and terms to guide governance.

1,2 Gartner, *Smarter with Gartner*, "How to Stop Data Quality Undermining Your Business," January 18, 2018, <https://www.gartner.com/smarterwithgartner/how-to-stop-data-quality-undermining-your-business>

ANALYTICS FRAMEWORK vs. ANALYTICS LIFE CYCLE

Analytics Framework

- Corporate Goals
- Corporate KPI's
- Business Process
- Data Sources

Analytics Life Cycle

- Develop
- Deploy
- Monitor

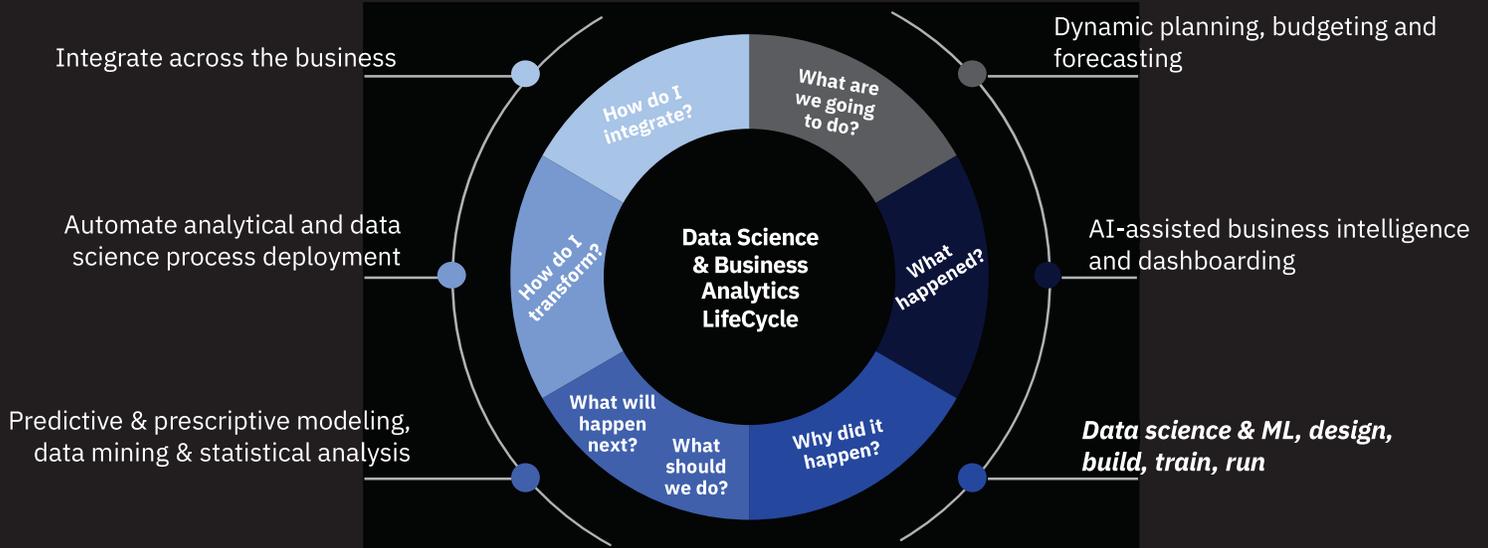
The Analytics Life Cycle is designed to support your Analytics Framework and support your AI strategy

1,2 Gartner, *Smarter with Gartner*, "How to Stop Data Quality Undermining Your Business," January 18, 2018, <https://www.gartner.com/smarterwithgartner/how-to-stop-data-quality-undermining-your-business>

ANALYTICS LIFE CYCLE



MODERNIZE AI Infused



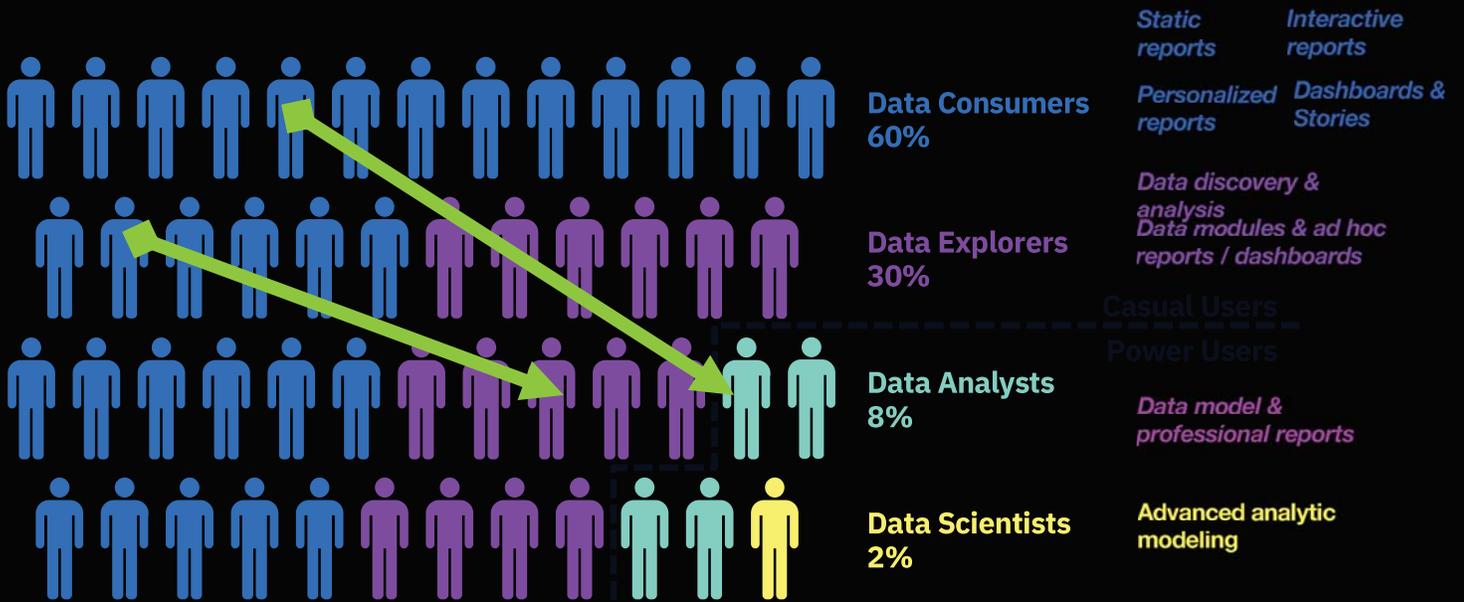
5

The multi-generational workforce

- Traditionalists
- Baby Boomers
- Generation X
- Generation Y
- Generation Z



There is a growing population of Professionals hungry to put data to work- and they are not going to wait



Source Eckerson Group 2017

7

IBM is the top choice for Gen Z employees in tech:

The Armonk, New York-based tech company topped Glassdoor's list for top employers for Generation Z. [Read the full story](#)

<https://finance.yahoo.com/news/ibm-glassdoor-gen-z-193615566.html>

Difference between machine learning and AI:

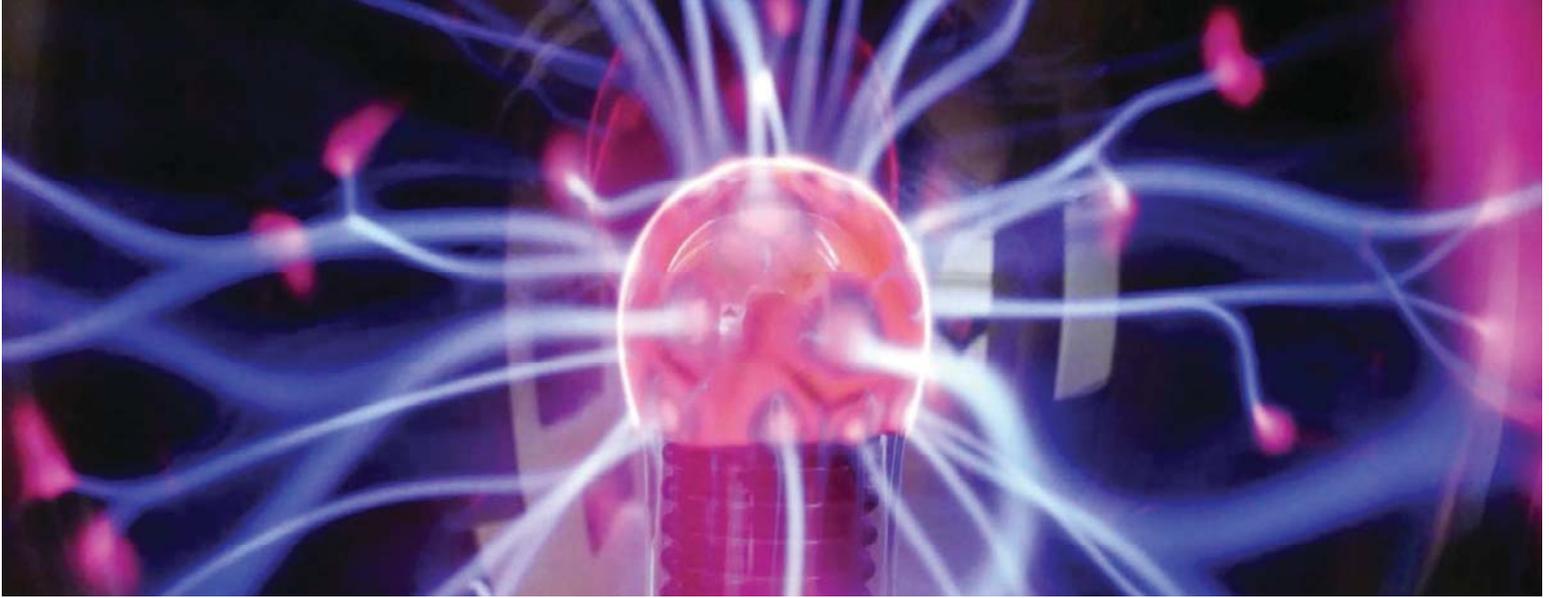
If it is written in Python, it's probably
machine learning

Source: Mat Veloso, Twitter post, November 22, 2018, 5:25 p.m., <https://twitter.com/matveloso/status/1065778379612282885?lang=en>

If it is written in PowerPoint,
it's probably AI

Source: Mat Veloso, Twitter post, November 22, 2018, 5:25 p.m., <https://twitter.com/matveloso/status/1065778379612282885?lang=en>

AI is not magic.



AI is
the new
electricity.



“In 2021, AI augmentation will generate **\$2.9 trillion** in business value and recover **6.2 billion** hours of worker productivity” - Gartner

\$31B

Cognitive and AI software spending will grow at 43% to reach \$31B by 2022 -IDC

85%

85% of AI projects will deliver erroneous outcomes due to bias in data, algorithms or the teams responsible for managing them - Gartner

20%

Only 20% of analytic insights will deliver business outcomes - Gartner

AI in our analytics offerings is about:

Prediction

—

Automation

—

Optimization

Ladder to AI



Collect



Organize



Analyze

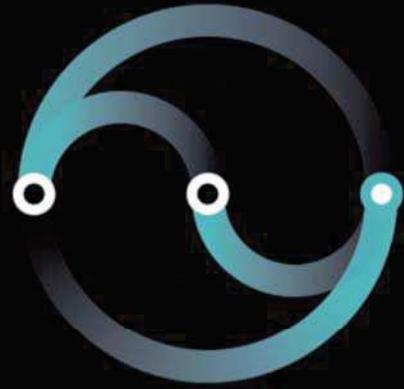


Infuse

Analyze



Infuse



Only
1 in 20

businesses have extensively
incorporated AI in their
business processes.





Yet, concerns remain

60%

of executives worry about potential liability

63%

lack organizational expertise



Design your Modernization and AI journey with trusted partners

Open, multicloud by design

Manage all your data and AI assets, regardless of origin

AI lifecycle automation

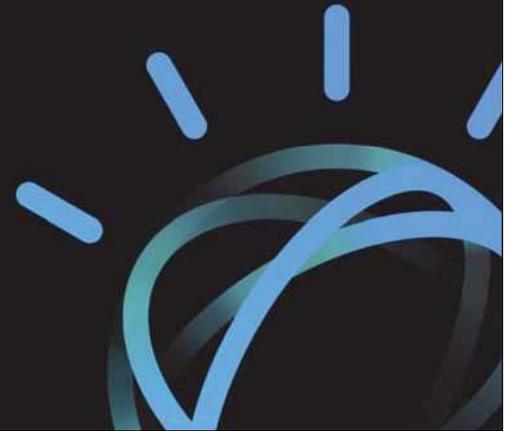
Drive productivity within a unified, fully governed platforms

Pre-built enterprise apps

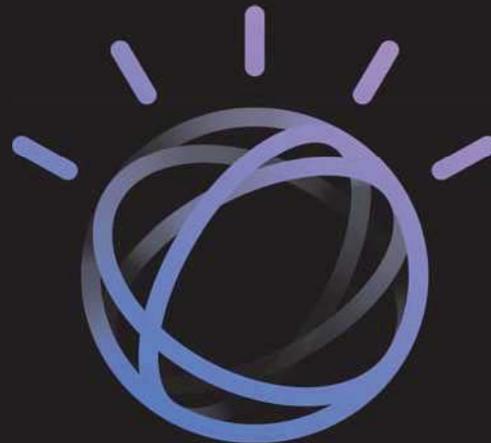
Speed time-to-value with less skills required

Proven, prescriptive, trusted

Partner with leaders in applied enterprise AI



THANK YOU.

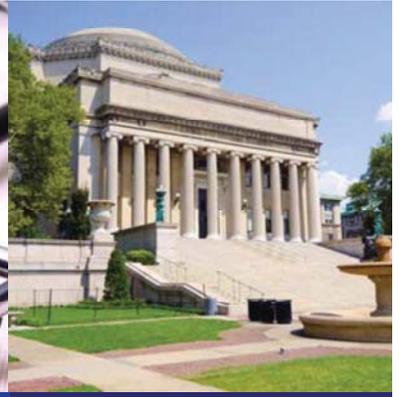


QUESTIONS ?

Session 2 (Back-up Slides and Hand Outs)

IBM Watson / © 2018 IBM Corporation

Stories from the Journey to AI



Retail

Predict store turnover ~7% more accurate in a few minutes

Banking /Insurance

Use machine learning to predict fraudulent activity



Healthcare

Ability to predict (with probability) the expected outcome of a patient with Sepsis



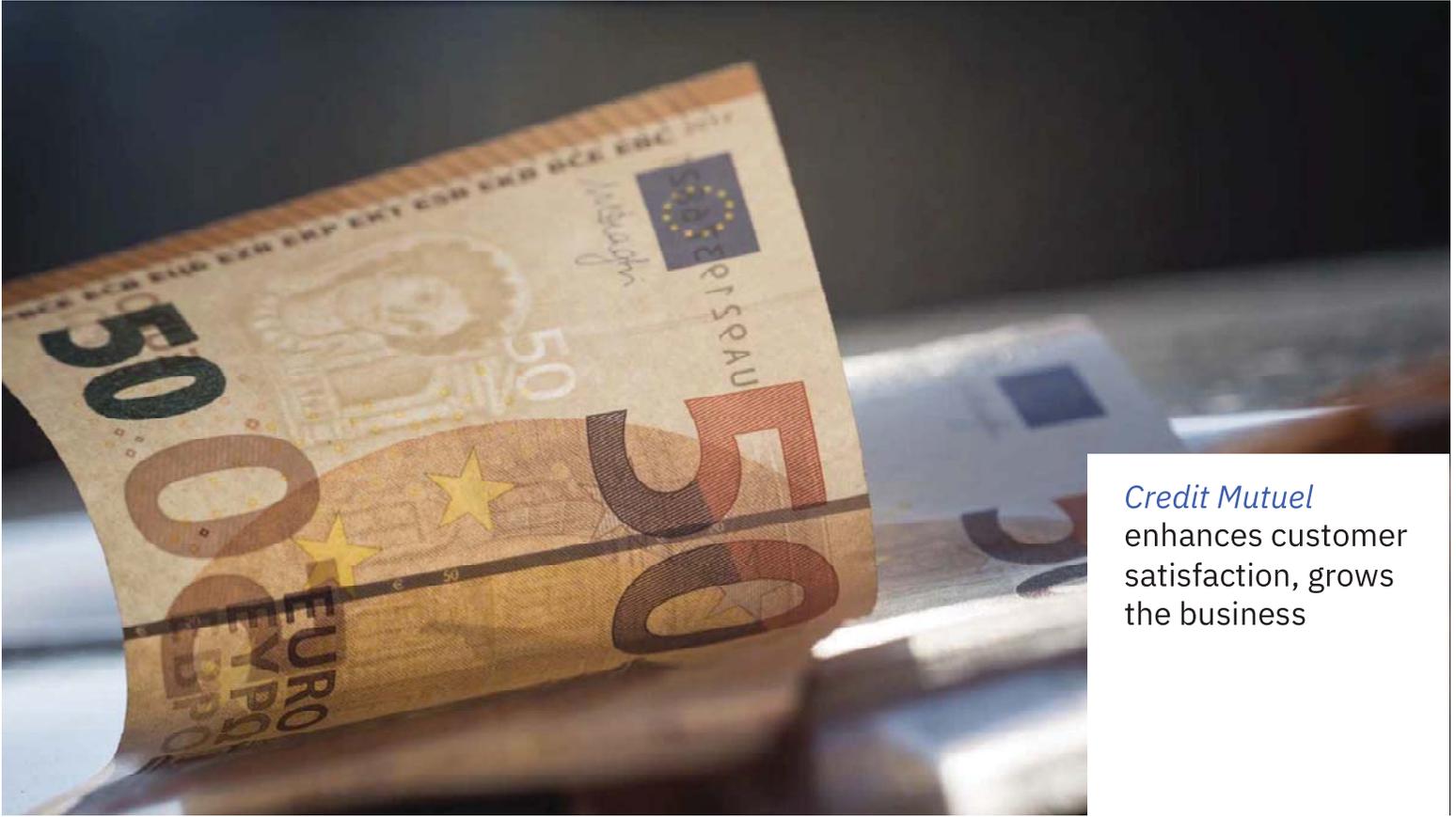
Public

Help a sporting league understand impact of social media topics on TV viewership

6,000 people for every 1 cardiologist

Source: iKare





Credit Mutuel
enhances customer
satisfaction, grows
the business



"IBM Analytics solutions are helping us understand the myriad factors that make consumers choose one product over another."
—Donald Neumann, Demand Manager, Grupo Boticario

Business challenge

Cosmetics are an easy way to tap into the latest trends—but what if that new lipstick sells out before you can buy it? To keep its customers in style, Grupo Boticário must predict demand accurately.



Transformation

Grupo Boticário has grown into the world's largest perfumery and cosmetics franchiser by helping its customers look good—which means it always needs to keep the hottest new products in stock. IBM Analytics helps the group understand what customers want, before they even know they want it—enabling smarter sales, marketing and production planning.

Business benefits:

20%

Increase in accuracy of demand forecasts over traditional approaches

Balances

Stock and service levels of the most desirable products, boosting sales

Enhances

Corporate agility by enabling real-time insights into consumer demand

Group O Boticario

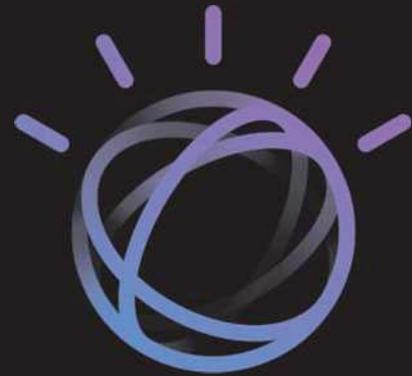
Predicting consumer demand for cosmetics with insight that is more than skin-deep

Grupo Boticário can trace its roots back to a small pharmacy in Curitiba, Brazil, which opened in 1977. Since then, it has grown to become one of the largest beauty groups in Brazil, and the leading perfumery and cosmetics franchiser in the world. Through four business units, O Boticário, Eudora, quem disse, berenice? and The Beauty Box, Grupo Boticário employs over 7,000 people directly and 22,000 indirectly, with a presence in 1,750 cities across Brazil.

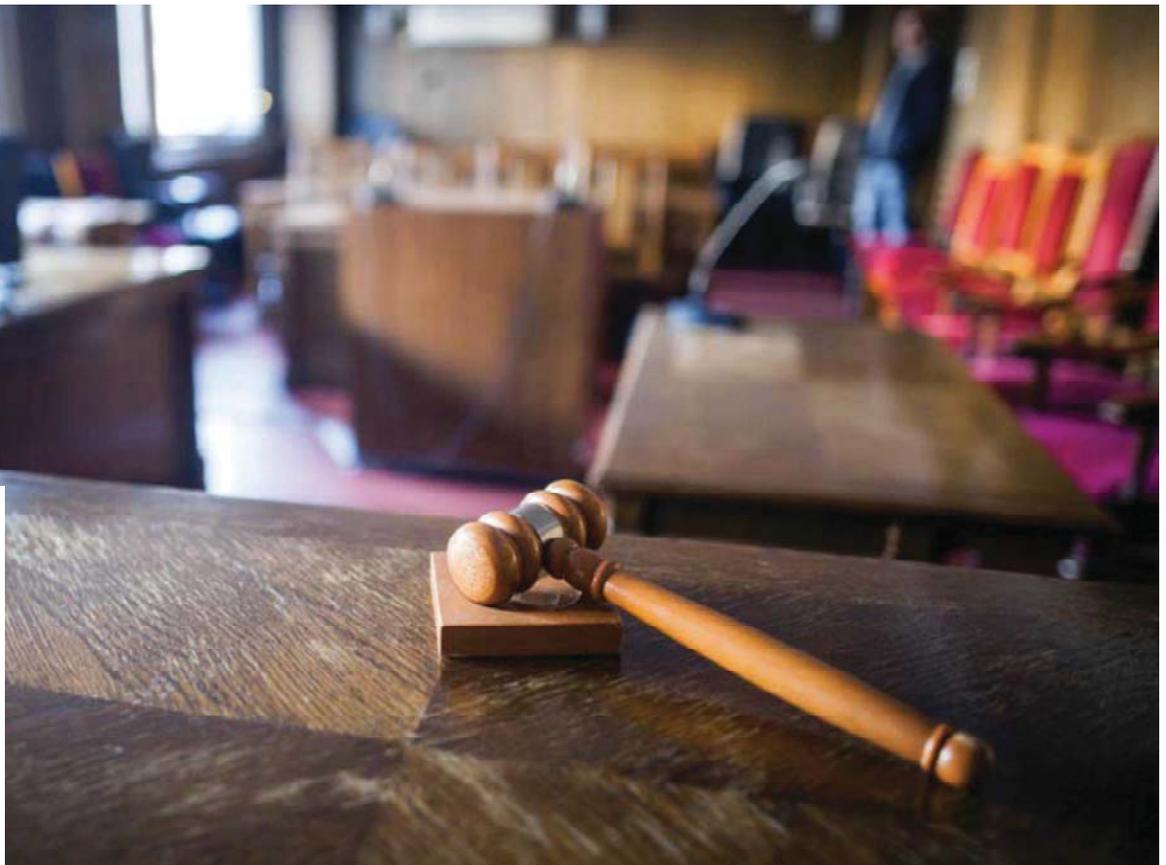
Solution components

- IBM® Cognos® TM1®
- IBM DB2®
- IBM SPSS® Collaboration and Deployment Services
- IBM SPSS Modeler
- IBM Business Partner Solutions

AI drives
results.



New Jersey Courts
cuts through the
caseload



New Jersey Courts speeds risk assessment

**3 hours to
only 3 minutes**
to create risk profile

USD8M-10M
annual savings



Nedbank
keeps the cash
flowing

Nedbank heads off ATM issues



Improve uptime

Maximize human resources

Cut costs

Enhance customer satisfaction

In their own words... client reaction to Cognos Analytics 11.1



Client Compilation ([LINK](#))



asr ([LINK](#))



Ziff Properties Inc. ([LINK](#))



Miami-Dade County ([LINK](#))



QuadReal ([LINK](#))



Seaboard Marine ([LINK](#))

Featured Planning Analytics - Videos



Hunter Industries



Pebble Beach



Grupo Boticário

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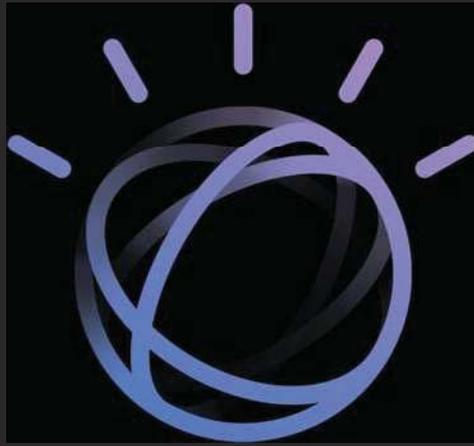
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***Business Law for
Florida CPAs***

Brandon L. Ketron, JD, LLM, CPA

Brandon Ketron, CPA, JD, LL.M
Associate
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Brandon Ketron, CPA, JD, LL.M. is an associate at the law firm of Gassman, Crotty & Denicolo, P.A., in Clearwater, Florida and practices in the areas of Estate Planning, Tax, and Corporate and Business Law. Brandon is a frequent contributor to LISI and presents webinars on various topics for both clients and practitioners. Brandon attended Stetson University College of Law where he graduated cum laude, and received his LL.M. in Taxation from the University of Florida. He received his undergraduate degree at Roanoke College where he graduated cum laude with a degree in Business Administration and a concentration in both Accounting and Finance. Brandon is also a licensed CPA in the states of Florida and Virginia.

FICPA – CPAs in Industry Conference

Business Law for Florida CPAs - - What Advisors Need To Know To Help Florida-Based Clients Maximize Their Planning Opportunities!

Presented by:



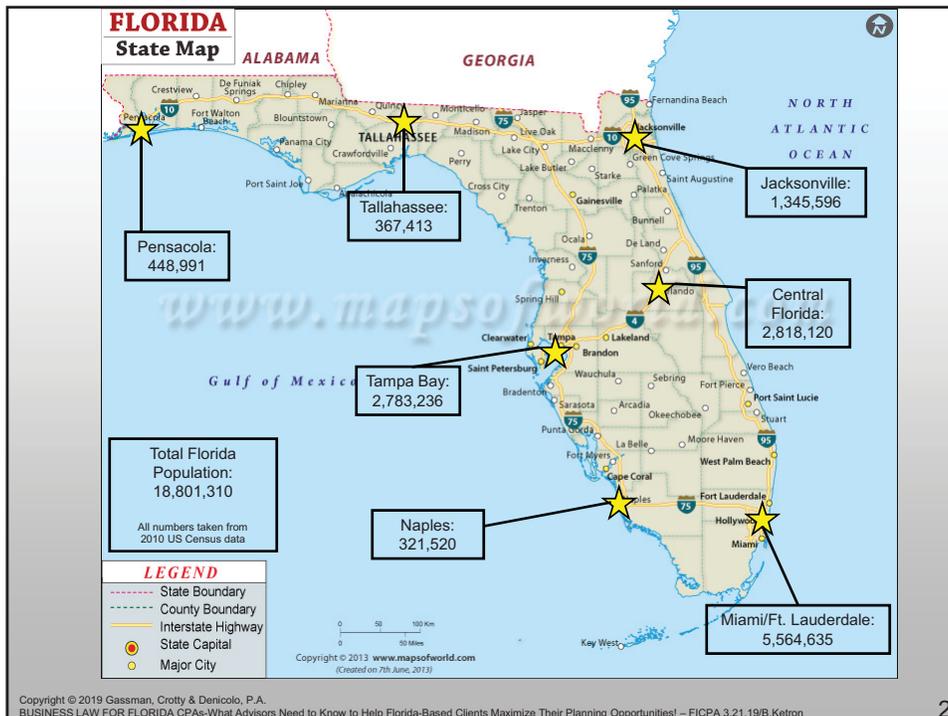
Brandon L. Ketron, J.D., LL.M., CPA
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Tampa Airport Marriott
Tampa, Florida

Thursday, March 21st and
Friday, March 22, 2019



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2018- 2019 Compliance Calendar of Events

Compliance Event	Date/Deadline
Filing period for annual reports of Corporations, LLC, LLP, LP and non-profit	January 1 – May 1
Florida Corporate Income Tax Due	March 15 – April 1
Spring Break	March 21 – April 1
Hurricane Season	June 1 – November 30
Fantasy Fest in Key West	October 19 - 28
First day of Hanukkah (time to buy a gift for your Jewish tax lawyer)	December 2
Deadline for early payment of Property Taxes with a discount (check your county tax appraiser’s website for the exact deadlines)	4%.....November 30 3%.....December 32 2%.....January 31 following year 1%.....February 28 following year
Property Tax deadline	Typically March 31, but check your tax appraiser’s website to be sure
TRIM Notice – Right to contest an appraisal	Varies – see your tax appraiser’s website immediately after you receive notice
Vehicle Tag Renewal	Annual on the owner’s birthday
Open Enrollment for HMOs	Varies – Check with your Employer’s human resource department
Gasparilla Pirate Festival in Tampa	January 26, 2019
Deadline for purchasing a Florida 529 Prepaid College Plan at the previous year’s prices	January 31, 2019
Homestead Application Deadline	March 1, 2019
Bike Week in Daytona	March 8, 2019 – March 17

A New Time in Florida?

On March 23, 2018, Governor Rick Scott approved House Bill 1013, known as the Sunshine Protection Act, which lawmakers believe will have a positive impact on the State’s economy and tourism because there will be more daylight hours in each day, all year round.

The Act begins by cleverly stating: “the State of Florida is known as the ‘Sunshine State,’ and as the ‘Sunshine State,’ Florida should be kept sunny year-round.” The Act will become effective on July 1, 2018.

However, despite both the Florida Legislature and Governor Scott agreeing on the time change, final approval is dependent upon an amendment to Title 15 § 260a of the U.S. Code by Congress. Section 260a states that from March to November of each year the Standard Time of each time zone must be advanced by one hour, which is known as Daylight Savings Time.

Importantly, Section 260a only allows states to exempt themselves from Daylight Savings Time, which would allow them to use Standard Time all year. However, Section 260a does not allow states to exempt themselves from Standard Time, as Florida is attempting to do.

In hopes of making this a reality, Senator Marco Rubio also introduced a bill that would amend Section 260a so that all states can elect to operate on Daylight Savings Time.

New Florida Bar Ethical Pronouncements – continued

With respect to lawyers who serve as the **fiduciary** of any estate planning documents that they draft, the Comments to Rule 4-1.8(c) further provide:

“This rule does not prohibit a lawyer or a partner or associate of the lawyer from serving as personal representative of the client’s estate or in another potentially lucrative fiduciary position in connection with a client’s estate planning.”

A lawyer may prepare a document that appoints the lawyer or a person related to the lawyer to a fiduciary office if:

1. The client is properly informed;
2. The appointment does not violate rule 4-1.7 [Conflicts of Interest; Current Clients, which can be found on the next two slides];
3. The appointment is not the product of undue influence or improper solicitation; and
4. The client gives informed consent, confirmed in writing [see next slide].

In obtaining the client’s informed consent, the lawyer should advise the client, in writing:

1. About who is eligible to serve as a fiduciary;
2. That a person who serves as a fiduciary is entitled to compensation; and
3. That the lawyer may be eligible to receive compensation for serving as a fiduciary in addition to any attorney’s fees that the lawyer may earn.

Proposed Amendment to Florida Statute § 733.617 Compensation of a Personal Representative

In addition to the new Florida Bar Rule, a proposed amendment to Florida Statute § 733.617 states that:

- If a lawyer prepares or supervises the execution of a will;
- That names the lawyer or a person related to the lawyer as the personal representative;
- Then neither the lawyer, nor person related to the lawyer can receive compensation for serving as the personal representative;
- Unless certain disclosures are made to the client/testator, and the client makes a written acknowledgment [See next slide for sample].

Proposed Amendment to Florida Statute § 733.617 Compensation of a Personal Representative

According to Proposed Section 733.617(g): A written acknowledgment signed by the client/testator that is in substantially the following form shall be deemed to comply with the disclosure requirements of this subsection:

I, (Name), declare that:

I have designated [my attorney, an attorney employed in the same law firm as my attorney, or a person related to my attorney] as a trustee in my trust instrument dated _____ (Date) _____.

Before executing the trust, I was informed that:

1. Unless specifically disqualified by the terms of the trust instrument, any persons, regardless of state of residence, including family members or friends, as well as corporate fiduciaries are eligible to serve as a trustee;
2. Any person, including an attorney, who serves as a trustee is entitled to receive reasonable compensation for serving as trustee, and
3. Compensation payable to the trustee is in addition to any attorneys' fees payable to the attorney or the attorney's firm for legal services rendered to the trustee.

Dated: _____ (Settlor)

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BECOMING A FLORIDIAN

- Domicile is based on intention - what state does the person actually call "home."
- For most Floridians, Florida is the only place they live, whether they have lived here for years, or moved here from another state. The moment they arrive with all of their belongings in the moving van they are Floridians.
- The question is less clear for those who have homes or otherwise spend many weeks both in Florida and in other jurisdictions and who may wish to claim income taxes, inheritance taxes, estate taxes, and other bounties that apply to their residences.
- While many northern states take the position that a person has not really left until they have just about completely deserted the state, Florida law recognizes the residency of someone who moves here and intends to make Florida their primary place of abode.

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BECOMING A FLORIDIAN, CONTINUED

- There are many steps that can be taken to help prove that Florida is an individual's primary residence, including:
 - Have a great moving in party and invite your tax advisors – open bar preferred;
 - File for the Florida homestead property tax exemption
 - Execute a new Florida Will and restate or amend trust documents;
 - Refer to Florida residence in all estate planning documents;
 - Register to vote in Florida, and then actually vote;
 - File a federal income tax return with the IRS at the location applicable to Florida residents (Austin, TX if no payment is enclosed, or Charlotte, NC if payment is enclosed);
 - Change the address on your passport;
 - Obtain a Florida's driver's license and license plates;
 - Open a Florida bank account;
 - Send announcement cards and let everyone know that you moved to Florida;
 - Have your car insurance; homeowner's insurance, and other coverages show that you are a Florida resident;
 - Have your church, synagogue, and similar affiliations in Florida; and
 - Make sure that everyone sends all of your mail and other items to Florida, for at least most of the year.

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WHAT NOT TO PUT INTO A REVOCABLE TRUST

- Life insurance and annuity contracts may not be protected from creditors if owned by a revocable trust
- IRAs and pension accounts cannot be placed in trust (but may be payable to a properly drafted trust)
- Section 1244 Stock—To qualify for ordinary loss on sale: must be issued to an individual, not a trust.
- Homestead property is probably safe from creditors in a Revocable Trust, however...(See *In re Bosonetto*, M.D. Florida decision of 2001)
- “Tenancy by the entirety” (TBE) ownership provides better creditor protection than having assets held in a revocable trust. Note that most Joint Revocable Trusts do not equate to TBE, for creditor protection purposes.

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FLORIDA TAX LAW

- No Individual, Partnership, S Corporation, or Trust Income Taxes – or Tax Returns! Move to Florida and have your S-corporation here, but manage your companies that operate elsewhere.
- No Inheritance or Estate Taxes
- C Corporation 5.5% Income Tax (79% of 5.5% is 4.345%. 4.345% + 21% is 25.345%.)
- Tangible Taxes
- Unemployment Tax
- Workers' Compensation
- Sales taxes
- Sales tax compulsory on the transfer of a car or boat to a company.

FLORIDA TAX LAW (continued)

- Sales Tax on Rent – 5.8% by state and 1% by most counties – 63% of 6.8% is 4.284% effective cost for high bracket tenant.

Consider saving 20% under 199A x 37% is 7.4%. 7.4% - 3.5% = 3.9%.

- 3.8% tax issue.
- Does the client have to pay rent? Can he pay minimal rent and file a sales tax return?
- Passive loss issue.
- Treasury Regulation Section 1.469-4(c)(2)- exception for commonly held entities. See *Williams v. C.I.R.*, 109 T.C.M. (CCH) 1398 (T.C. 2015).
- Sales Tax on the Sale of Tangible Assets and Rentals
 - Isolated sale exception- Business broker involvement can cause a sales tax to apply when businesses are sold.

DOCUMENTARY STAMP TAXES

- Documentary Stamp Tax on Deeds – 7/10 of 1% of consideration paid in all counties except Miami-Dade (.6% in Miami-Dade, plus a .45% surtax on transfers that are not single-family residences)
 - Applies to real property transfers, with certain exceptions, and also various traps
- Documentary Stamp Tax applicable to notes/mortgages:
 - Promissory notes and other written obligations to pay money, or assignments of salaries, wages, or other compensation where there is no mortgage (taxed at .35%; taxation is limited for these to \$2,450)
 - Signing notes outside of Florida territorial waters (more than 9 miles out) can be popular and tax-deductible.
 - Documentary stamp taxes on mortgages are taxed at .35% (stamp taxation of mortgages has no limit); and mortgages on Florida real property are also subject to a non-recurring intangible tax of .2% of the amount of the underlying debt that is attributable to the Florida property.
 - Only applies to documents executed and delivered in Florida
 - Trap 1 – deed from joint to one spouse will trigger tax equal to ½ of the mortgage balance times .007.
 - Trap 2 – deed subject to mortgage exceeding the value of the property may be taxed based on the mortgage balance.

DOCUMENTARY STAMP TAXES

- Documentary Stamp Tax rates:

Start date	End date	Tax rate	Ratio
January 1, 1931	June 30, 1957	.1%	1.001
July 1, 1957	June 30, 1963	.2%	1.002
July 1, 1963	September 30, 1979	.3%	1.003
October 1, 1979	June 30, 1981	.4%	1.004
July 1, 1981	June 30, 1985	.45%	1.0045
July 1, 1985	June 30, 1987	.5%	1.005
July 1, 1987	May 31, 1991	.55%	1.0055
June 1, 1991	July 31, 1992	.6%	1.006
August 1, 1992	July 1, 2020	.7%	1.007

- In order to calculate how much a person paid in documentary stamp taxes:
 - Find the rate of the stamp tax using the table above for when the deed was transferred (i.e. in July 1991, .6%)
 - Divide the amount paid in total by the ratio of the corresponding tax rate (\$100,600 / 1.006 = \$100,000)
 - Subtract the resulting number (the interest) from the original value (the interest plus taxes) for the amount paid in documentary stamp taxes for the transfer of interest in real property (\$100,600 - \$100,000 = \$600)

REAL ESTATE AD VALOREM TAXES

- Annual ad valorem tax rate is just under 2% of “appraised value”, with a \$50,000 exemption (a proposal to raise this exemption is on the ballot for November) for homestead and a 3% or CPI (whichever is lower) annual cap on increases.
 - Portability of the 3% or CPI cap is allowed.
 - Many issues can arise on homestead exemption planning with trusts and joint non-spouse owners and in other situations.
- To qualify for tax homestead exemption, the client must own the property by December 31 and reside on it at 12:00 am January 1, and a special homestead exemption application must be filed with the county property appraiser on or before March 1.
- Many counties require the actual homeowners to physically appear to sign the registration materials under penalty of perjury – do not commit a felony by taking homestead exemption in two states at the same time.

NOT TO BE CONFUSED

STATE HOMESTEAD TAX EXEMPTION		STATE CREDITOR EXEMPTION	
1	WHAT IS IT? Saves approximately \$1,000 of taxes (2% of \$50,000), plus the 3% cap on future increases applies.	1	PROVIDES PROTECTION FROM CREDITORS
2	HOW TO QUALIFY? Normally, one or more individuals reside on the property and call it their homestead. There is no size limit.	2	MUST BE RESIDENTIAL HOMESTEAD PROPERTY WHERE THE OWNER LIVES AS PRIMARY RESIDENCE. The law only protects up to half an acre if within city limits, and up to 160-acres if outside of city limits (or if was outside of city limits and was annexed while primary residence).
3.	REGISTRATION REQUIREMENTS. **Must reside on the property when the bell strikes January 1 st (have to move in before New Years). **Must register with Property Appraiser Office by March 1 st of the following year. **Homestead tax status begins the January 1 st after the move-in, if the March 1 st registration deadline is met.	3	NO REGISTRATION REQUIREMENTS AND NO DEADLINES FOR MOVING IN – PROTECTED FROM THE MOMENT OWNED (EXCEPT AS TO A JUDGMENT AGAINST THE PROPERTY THAT EXISTED BEFORE IT WAS “HOMESTEADED.”)

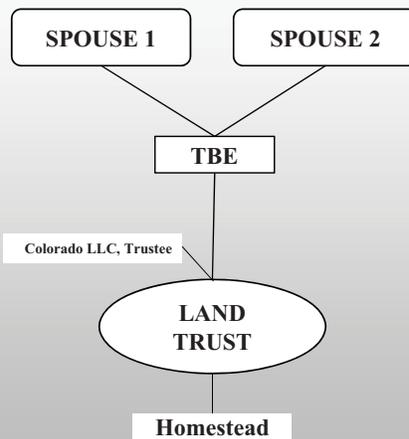
THREE WAYS TO GET THE HOMESTEAD TAX EXEMPTION WITHOUT OWNING THE HOUSE

1. Resident is the beneficiary of a trust that provides her with the right to reside on the trust property as if it were homestead.
2. Resident has use under a 98-year – or longer – lease.

NOTE: A leasehold estate may qualify for homestead creditor protection.

3. Resident has a life estate in the homestead.

Homestead Confidentiality



10% LIMITATION ON THE ANNUAL INCREASE IN THE ASSESSED VALUE OF COMMERCIAL PROPERTY

In 2008, the Florida Constitution was amended to protect non-homestead property owners from large increases in their annual tax assessment property value.

Florida Statute § 193.1555 provides that the assessed value of certain types of nonresidential real property may not exceed 10% of the assessed value for the prior year.

The 10% cap applies to most types of commercial property, including non-homestead residential property (i.e., rental property) and nonresidential property (i.e., commercial property.)

However, property that is not protected by the 10% cap includes: agricultural property, conservation land, and other property that already receives beneficial tax treatment.

FLORIDA'S STATUTORY CREDITOR EXEMPTIONS

- Some of the most debtor-friendly exemptions in the nation.
- But be sure to read each statute and be aware of case law exceptions!
- Mercury Marquis are very common here and can do a lot of damage! Jerry Hesch's Triumph is also pictured below.



IMPORTANT RULES AFFECTING THE USE OF CREDITOR EXEMPTIONS IN FLORIDA

- In planning with creditor exemptions, it is important to both **read the statute** carefully and to use supplemental materials.
- The Courts are not uniform or necessarily predictable in determining how various exemption rules will be applied. Under Florida law, exemptions are to be construed liberally in favor of providing the benefits of the exemptions to debtors, although this is not always the case.
- Keep in mind that Bankruptcy Court decisions are often not reviewed by appellate judges and may be incorrect, but nevertheless “remain standing” unless or until appealed. One bankruptcy court judge does not have to follow published decisions of another, so bankruptcy court decisions are often inconsistent.

WHAT IS A FLORIDIAN?

- A debtor will be considered domiciled in Florida with the ability to use the Florida creditor exemptions from the first day that he or she lives in Florida with the intention to make Florida his or her home.
- Under prior bankruptcy law, an individual could have lived in Florida for only 180 days before the bankruptcy filing in order to take advantage of Florida’s favorable exemption rules. Now this is 730 days.
- Can moving to Florida be a fraudulent transfer? Bankruptcy Court decisions have found that moving to Florida for the purpose of taking advantage of exemptions could result in a debtor being limited to the exemptions allowed under the state from which he relocated. However, if the transfer of assets is into a protected Florida homestead there may be nothing the creditor can do about it outside of bankruptcy.

CREDITOR EXEMPT ASSETS	ASSETS THAT ARE DIFFICULT FOR A CREDITOR TO OBTAIN	ASSETS EXPOSED TO CREDITORS
Homestead -Up to half acre if within city limits. -May be immune from fraudulent transfer statute.	Limited partnership and similar entity interests.	Individual money and brokerage accounts.
IRA -Includes ROTH, Rollover, and Voluntary IRAs, but possibly not inherited IRAs.	Foreign trusts and companies.	Joint assets where both spouses owe money.
Permanent Life Insurance -Must be owned by insured.	Note – foreign entities are very rarely recommended and must be reported to IRS -	Personal physical assets, including car, except for \$4,000 exemption (\$1,000 if homestead exemption is claimed in bankruptcy).
401(k) -Maximize these!	Foreign bank accounts.	One-half of any joint assets not TBE where one spouse owes money.
Tenancy by the Entireties (joint where only one spouse is obligated) - Must be properly and specially titled – joint with right of survivorship may not qualify.	Vocabulary: EXEMPT ASSET – An asset that a creditor cannot reach by reason of Florida law – protects Florida residents. CHARGING ORDER PROTECTION – The creditor of a partner in a limited partnership, limited liability limited partnership, or properly drafted LLC can only receive distributions as and when they would be paid to the partner. FRAUDULENT TRANSFER - Defined as a transfer made for the purpose of avoiding a creditor. Florida has a 4 year reach back statute on fraudulent transfers. A fraudulent transfer into the homestead may not be set aside unless the debtor is in bankruptcy. It takes 3 creditors of a debtor who has 12 or more creditors to force a bankruptcy. Upon filing a Chapter 7 Bankruptcy, an individual debtor may be able to cancel all debts owed and keep exempt assets, subject to certain exemptions. Annuities and life insurance policies are not always good investments, and can be subject to sales charges and administrative fees. There is a lot more to know- but this chart may be a good first step.	
529 College Savings Plans		
Annuity Contracts		
Wages of Head-of-Household		
Wage Accounts for up to 6 months		
Up to \$4,000 of personal assets – or less in bankruptcy.		

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FOUR YEAR STATUTE OF LIMITATIONS MAY NOT APPLY WHEN TRANSFERS ARE MADE TO AVOID CREDITORS UNLESS THE DEBTOR FILES BANKRUPTCY

The Florida Fraudulent Transfer Statute provides for a statute of limitations that is sometimes four years, and sometimes until the later of four years or one year from when the creditor knew or should have known about the transfer. The solely “four year” statute will generally apply when the transfer is from a non-exempt asset to an asset that is exempt from creditor claims under Florida Statute Section 222, which may not include transfers to tenancy by the entireties, because they are not listed as an exempt asset under Section 222. Homestead is listed as an exempt asset under Section 222, but because the homestead exemption has been found to trump the Fraudulent Transfer Statute, the four year statute will usually be irrelevant with respect to a transfer into homestead.

Florida Statute Section 726.110 provides that:

- A cause of action with respect to a fraudulent transfer or obligation under ss. 726.101-726.112 is extinguished unless action is brought:
 - (1) Under s. 726.105(1)(a), within 4 years after the transfer was made or the obligation was incurred or, if later, within 1 year after the transfer or obligation was or could reasonably have been discovered by the claimant;
 - (2) Under s. 726.105(1)(b) or s. 726.106(1), within 4 years after the transfer was made or the obligation was incurred; or
 - (3) Under s. 726.106(2), within 1 year after the transfer was made or the obligation was incurred.

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FRAUDULENT TRANSFER ACTION EXTINGUISHMENT CHART

	TERM	ITEMS	STATUTE LANGUAGE
1	The later of four years after the transfer is made or the obligation is incurred, or one year after the transfer or obligation was or could reasonably have been discovered by the claimant.	FS 726.105(1)(a) (The 1 year after transfer component will not apply in bankruptcy.)	Transfers fraudulent as to present and future creditors: (1) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation. (a) With actual intent to hinder, delay, or defraud any creditor of the debtor; or... See: Biel Bank
2	Four years after the transfer was made or the obligation was incurred	FS 726.105(1)(b)	Transfers fraudulent as to present and future creditors – "The transfer was made or the obligation was incurred..." (1)(b) Without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor: 1. Was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relations to the business transaction; or 2. Intended to incur, or believed or reasonably should have believed, that he or she would incur debts beyond his or her ability to pay as they became due.
3	One year after the transfer was made or the obligation was incurred	FS 726.106(2)	(2) A transfer made by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made if the transfer was made to an insider for an antecedent debt, the debtor was insolvent at that time, and the insider had reasonable cause to believe that the debtor was insolvent.
4	Four years after the transfer was made or the obligation was incurred	FS 222.30(5)	(5) A cause of action with respect to a fraudulent asset conversion is extinguished unless an action is brought within 4 years after the fraudulent asset conversion was made.
5	The later of four years after the transfer is made or the obligation is incurred, or one year after the transfer or obligation was or could reasonably have been discovered by the claimant.	FS 222.30(6)	(6) If an asset is converted and the converted asset is subsequently transferred to a third party, the provisions of chapter 726 apply to the transfer to the third party
<p>Note: Conversion is defined at FS 222.30 as "every mode, direct or indirect, absolute or conditional, of changing or disposing of an asset, such that the products or proceeds of the asset become immune or exempt by law from claims of creditors of the debtor and the products or proceeds of the asset remain property of the debtor.</p> <p>Note: 726.105(2) provides as follows: (2) In determining actual intent under paragraph (1)(a), consideration may be given among other factors to whether: (a) The transfer or obligation was to an insider. (b) The debtor retained possession or control of the property transferred after the transfer. (c) The transfer or obligation was disclosed or concealed. (d) Before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit. (e) The transfer was of substantially all the debtor's assets. (f) The debtor absconded. (g) The debtor removed or concealed assets (h) The value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred. (i) The debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred. (j) The transfer occurred shortly before or shortly after a substantial debt was incurred. (k) The debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor.</p>			
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FS 726.105 Transfers Fraudulent as to Present and Future Creditors

- (1) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:
- (a) With actual intent to hinder, delay, or defraud any creditor of the debtor; or
- (b) Without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor:
- Was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or
 - Intended to incur, or believed or reasonably should have believed that he or she would incur, debts beyond his or her ability to pay as they became due.
- (2) In determining actual intent under paragraph (1)(a), consideration may be given, among other factors, to whether:
- (a) The transfer or obligation was to an insider.
- (b) The debtor retained possession or control of the property transferred after the transfer.
- (c) The transfer or obligation was disclosed or concealed.
- (d) Before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit.
- (e) The transfer was of substantially all the debtor's assets.
- (f) The debtor absconded.
- (g) The debtor removed or concealed assets.
- (h) The value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred.
- (i) The debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred.
- (j) The transfer occurred shortly before or shortly after a substantial debt was incurred.
- (k) The debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor.

FS 726.106 Transfers Fraudulent as to Present Creditors

- (1) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.
- (2) A transfer made by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made if the transfer was made to an insider for an antecedent debt, the debtor was insolvent at that time, and the insider had reasonable cause to believe that the debtor was insolvent.

FS 222.30 Fraudulent Asset Conversions

- (1) As used in this section, "conversion" means every mode, direct or indirect, absolute or conditional, of changing or disposing of an asset, such that the products or proceeds of the asset become immune or exempt by law from claims of creditors of the debtor and the products or proceeds of the asset remain property of the debtor. The definitions of Chapter 726 apply to this section unless the application of a definition would be unreasonable.
- (2) Any conversion by a debtor of an asset that results in the proceeds of the asset becoming exempt by law from the claims of a creditor of the debtor is a fraudulent asset conversion to the creditor, whether the creditor's claim to the asset arose before or after the conversion of the asset, if the debtor made the conversion with the intent to hinder, delay, or defraud the creditor.
- (3) In an action for relief against a fraudulent asset conversion, a creditor may obtain:
- (a) Avoidance of the fraudulent asset conversion to the extent necessary to satisfy the creditor's claim.
- (b) An attachment or other provisional remedy against the asset converted in accordance with applicable law.
- (c) Subject to applicable principles of equity and in accordance with applicable rules of civil procedure:
- An injunction against further conversion by the debtor of the asset or of other property.
 - Any other relief the circumstances may require.
- (4) If a creditor has obtained a judgment on a claim against the debtor, the creditor, if the court so orders, may levy execution on the asset converted or its proceeds.
- (5) A cause of action with respect to a fraudulent asset conversion is extinguished unless an action is brought within 4 years after the fraudulent asset conversion

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FLORIDA BAR ACTION AGAINST LAWYER FOR ALLEGED FRAUDULENT TRANSFER

By Alan Gassman and Dena Daniels

In December 2015, the Florida Supreme Court determined that a lawyer forming a second professional association in an attempt to avoid paying a judgment owed by his first P.A. did not violate Florida's Rules of Professional Conduct. [When violations of the Florida Rules of Professional Conduct occur, the complaint is first brought before the Florida Bar Committee on Professional Ethics, once a decision is rendered at that level, an appeal to the Florida Supreme Court may be filed. Upon the Florida Supreme Court receiving the case, a "Referee" is assigned to the case to determine the final holding.] Initially, the Florida Bar sued the lawyer [*The Florida Bar v. Jefferson Riddell*, SC 15-1288 (Dec. 18, 2015).] claiming two separate violations. First, that the new professional association was a mere continuation of the prior one and had been formed with the intent to hinder, delay, or defraud another law firm, which the Bar alleged was a violation of Rule 4-8.4, and, second, that the lawyer diverted monies belonging to the first professional association to a bank account owned by the second professional association with the intent to hinder, delay, or defraud the creditor.

Rule 4-8.4(c-d), titled "Misconduct," states that "a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation, (d) a lawyer shall not engage in conduct in connection with the practice of law that is prejudicial to the administration of justice." The Supreme Court appointed Referee found that the lawyer did not transfer tangible assets or accounts receivable from the first professional association to the second and that there was no transfer of goodwill to the second professional association. The Referee also found that the lawyer's long-standing practice of paying personal expenses from the business operating account of the professional association "is more than norm for small business[es] than the exception," and that every year, his CPA sorted out personal and business expenses so that "nothing was hidden. Nothing was 'laundered.'" The court further noted that the Respondent did not commit fraud, deceit, or misrepresentation.

The Referee indicated that the evidence was not clear and convincing such that it could be proven that the lawyer acted in an unlawful or contrary manner to honesty and justice. It would have been nice if the Referee had further pointed out that even if this lawyer had committed a "fraudulent transfer" to avoid a creditor, this would not be considered as conduct involving dishonesty, fraud, deceit, or misrepresentation. Nor, by our view, would this be considered to be "prejudicial to the administration of justice." In the US Supreme Court case of *Grupo Mexicano v. Alliance Bond Fund*, [527 US 308 (1999).] it was ruled that it is not illegal or "wrong" for a debtor to take steps to preserve assets that may be legally used. The Supreme Court held that it did not have the authority to grant a preliminary injunction that would hinder individuals being sued by creditors from disposing his or her assets pending adjudication of contract claim of the creditor for damages. In the opinion, the late Justice Antonin Scalia stated that allowing federal courts to issue such injunctions to creditors "could radically alter the balance between debtors' and creditors' rights and might induce creditors to engage in a race to the courthouse...which might prove financially fatal to the struggling debtor."

This case does point out that the Florida Bar may pursue lawyers who engage in aggressive transfers to avoid creditors and that it is important to confirm that no such transfer involves dishonesty, fraud, deceit, or misrepresentation.

HOMESTEAD CREDITOR PROTECTION

- In Florida, there is unlimited protection for homestead property and improvements thereon of up to a half-acre in the city or 160 acres in the county, provided the owner is an individual (or perhaps a revocable trust) who resides on the property and is a U.S. citizen or Green Card holder.
- The person must be a permanent resident of Florida and intend to make the property his or her permanent residence.
- Need not qualify for real estate homestead tax exemption to have the benefit of Constitutional creditor protection.
- Florida homestead protection “trumps” fraudulent transfer statutes (*Havoco of America, Ltd. v. Hill*)
- Beware of bankruptcy law limitations and the ten-year fraudulent transfer look-back period.

BIFANI CASE EXPANDS DEFINITION OF ILL GOTTEN GAINS THAT MAY NOT BE PROTECTED IF TRANSFERRED TO HOMESTEAD

WAY DOWN UPON THE BIFANI RIVER: SETTING ASIDE FRAUDULENT TRANSFER INTO FLORIDA HOMESTEADS- BY: ALAN S. GASSMAN, TRAVIS ARANGO, AND DENA DANIELS

DEBTOR'S TRANSFEREE WHO RECEIVED PRE BANKRUPTCY FRAUDULENT TRANSFER ENDS UP ALL WET

FOOTNOTE FROM EDITOR--THE SUWANNEE RIVER IS A 246 MILE BLACKWATER RIVER THAT CAN TAKE YOU MUCH OF THE WAY FROM THE TAMPA BANKRUPTCY COURT TO THE 11TH CIRCUIT COURT OF APPEAL IN ATLANTA, WHICH IS WHERE THIS CASE WENT BEFORE THE DEBTOR'S RAFT SANK. MADE FAMOUS BY STEPHEN FOSTER'S SONG, THE OLD FOLKS AT HOME (FOSTER NEVER SAW THE RIVER BUT READ ABOUT IT), MR. GASSMAN OWNS TWO LOTS ON THIS RIVER THAT HE BOUGHT IN 2007 AND WOULD GLADLY SELL FOR HALF OF WHAT HE PAID, AND NO EXTRA CHARGE FOR THE ALLIGATORS WHO LIVE THERE. SEE WAY DOWN UPON THE SUWANNEE RIVER FAR AWAY, LLC ON THE SUNBIZ WEBSITE, AND ALSO HEY SANTA FEY (RIVER), LLC AND WITHLACOOCHIECOOCHICOO, LLC., WHICH OWN HIS OTHER FAILED RIVER INVESTMENTS.

THIS ARTICLE IS DEDICATED TO THE MEMORY OF JOAN RIVERS, WHO PERFORMED IN TAMPA BAY SHORTLY BEFORE HER DEATH AT AGE 81 WITH GREAT ENERGY AND PHYSICAL STRENGTH, LIKE MANY OF US WHO LOVE WHAT WE DO AND INTEND TO DIE IN THE SADDLE.

THE FLORIDA SUPREME COURT, IN *HAVOCO OF AMERICA, LTD. V. HILL*, 790 SO.2 D 1018 (FLA. 2001), HELD THAT THE HOMESTEAD PROTECTION AFFORDED UNDER THE FLORIDA CONSTITUTION TRUMPS THE FLORIDA FRAUDULENT TRANSFER STATUTE, AND THEREFORE A DEBTOR SUBJECT TO AN IMPENDING OR ACTUAL JUDGMENT CAN USE MONIES TO PURCHASE OR PAY DOWN THE MORTGAGE ON A HOMESTEAD OWNED BY THE TRANSFEROR, WITH THE CREDITOR HAVING NO REMEDY AGAINST THE HOMESTEAD UNLESS OR UNTIL THE DEBTOR FILES FOR BANKRUPTCY BY REASON OF THE PROVISIONS OF THE 2005 BANKRUPTCY REFORM ACT "MANSION LAW".

BUT WHAT IF THE DEBTOR, KNOWING THAT HE OR SHE MAY BE GOING INTO BANKRUPTCY, GIVES THE MONIES TO A CLOSE FRIEND WHO PUTS THEM INTO A HOMESTEAD AND THEN INTENDS TO HUNKER DOWN AND REMAIN JUDGMENT PROOF, AND OUTSIDE OF BANKRUPTCY, SO THAT THE CREDITOR IS NOT ABLE TO RECOVER THE FUNDS? AND THE DEBTOR IS ABLE TO LIVE WITH THE CLOSE FRIEND AND ENJOY THE BENEFIT OF THE HOME. WILL THIS BOAT FLOAT?

THIS EXACT FACTUAL PATTERN HAS OCCURRED MORE THAN ONCE, LEADING THE COURTS TO LOOK FOR A WAY TO REACH THE HOME EQUITY AND PREVENT THIS TYPE OF CONDUCT, AS OPPOSED TO WAITING FOR CONGRESS TO ENDORSE AN APPROPRIATE REMEDY BY AMENDING THE BANKRUPTCY CODE.

JUDGE MICHAEL WILLIAMSON, A VERY ABLE AND WELL-RESPECTED BANKRUPTCY JUDGE OF THE MIDDLE DISTRICT BANKRUPTCY COURT SITTING IN TAMPA, CAME TO THE CONCLUSION IN 2013 THAT A FRAUDULENT TRANSFER, DIRECTLY OR INDIRECTLY, TO THE DEBTOR'S COHABITING AND APPARENT SIGNIFICANT OTHER BEFORE FILING BANKRUPTCY ROSE (LIKE A RIVER) TO THE LEVEL OF BEING CONSIDERED AS SECRETION OF "ILL-GOTTEN GAINS" UNDER THE FLORIDA CASE LAW, SAYING SPECIFICALLY THAT:

HERE, LAMARCA'S SARASOTA HOUSE WAS ACQUIRED WITH ILL-GOTTEN PROCEEDS. LAMARCA USED THE NEARLY \$670,000 FROM THE SALE OF THE GOLDEN EAGLE ROAD PROPERTY TO PURCHASE HER SARASOTA HOUSE. IT WOULD BE INEQUITABLE AND UNJUST TO ALLOW THE DEBTOR (BIFANI) TO FRAUDULENTLY TRANSFER PROPERTY TO LAMARCA TO KEEP IT FROM HIS CREDITORS. (IN RE BIFANI), 493 B.R. 866, 871 (BANKR. M.D. FLA. 2013)

The Federal District Court sitting in Tampa found that the decision did not hold water, and overturned it, but the Eleventh Circuit Court of Appeal agreed with the judge, finding that:

Under Florida law, homestead property purchased with funds obtained by fraud is not exempted from equitable liens. See *Havoco*, 790 So.2d at 1028. The facts of this case do not fall within *Havoco*'s exception because the funds used to purchase the Sarasota property were obtained through Bifani's fraudulent transfers.....That the fraud occurred in a bankruptcy proceeding rather than a criminal offense is irrelevant.

It is almost certain that the U.S. Supreme Court will not have any interest in hearing this case, and the Florida Supreme Court will not have jurisdiction because bankruptcy court cases pass to the federal system, and not under the state system. The Eleventh Circuit Court of Appeals could have requested guidance from the Florida Supreme Court by certifying the issue as a question of importance but apparently chose not to do so. Floridians and their advisors will now most likely need to wait a number of years before similar factual patterns occur in Circuit Courts and become subject to Circuit Court decisions that are appealed to District Courts of Appeals, and then eventually to the Florida Supreme Court.

A prominent bankruptcy attorney has had this to say about the case:

If you think it through, the whole idea of getting around the federal Bankruptcy law by doing something through an apparent straw man that you cannot do directly, you can certainly conclude that at least the spirit of the 2005 Bankruptcy Act was violated. That doesn't really shock me. If you're going to try to take advantage of the Florida homestead law, you need to follow the centuries old method of buying your own house, and if this is a fraudulent transfer you also have to stay out of bankruptcy for 10 years thereafter. It's not escaping taxes or domestic relations liability, it's not money you stole from somebody else, but a well respected bankruptcy judge, with affirmation from the highest federal court overseeing Florida federal courts have found that it is the equivalent of transferring ill-gotten gains into homestead. Debtors and advisors are going to have to stick with the patterns that worked, at least for the foreseeable future. It could be a decade or more before the Florida Supreme Court or the U.S. Supreme Court ever look at this. In re Bifani, 580 F. App'x 740, 747 (11th Cir. 2014)

Judge Williamson had this to say after the 11th Circuit Court of Appeals opinion was published:

While *Havoco* attracts the most attention in allowing a fraudulent conversion of non-exempt property into a homestead, what is often overlooked is that *Havoco* itself recognizes the *Fishbein* exception, 619 So. 2d 267 (Fla. 1993), which allows the imposition of an equitable lien where there are two frauds: (1) the permitted fraudulent conversion into the homestead, and (2) the initial wrongful conduct that taints the proceeds as being ill-gotten, e.g. the funds were stolen or obtained through fraud. The 11th Circuit in *Bifani* simply confirms what has long been the law in this area.

While this case may be criticized by some as being judicial legislation, and may add to the longstanding misconception among some courts and advisors that a fraudulent transfer somehow constitutes fraud and is therefore bad or per se illegal, it also shows that conventional knowledge will sometimes be turned on its ear, without warning, and that clients and advisors should not rely upon any one creditor protection technique, or any particularly creative or aggressive one, when multiple techniques are available. Also, as we all know, hogs are often slaughtered.

In *Havoco*, the Florida Supreme Court found that an intentionally fraudulent transfer into homestead would not be set aside because the protection of homestead under the Florida Constitution trumps the Florida Fraudulent Transfer Statute. In *Fishbein*, however, the Florida Supreme Court found that when ill-gotten monies are transferred into homestead, the transfer can be set aside. In *Bifani*, the 11th Circuit agreed with Judge Williamson that a fraudulent transfer made by someone contemplating bankruptcy will be considered as ill-gotten gains for purposes of recapturing the transfer from the homestead of the transferee that was funded thereby.

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BAKER'S DOZEN: NO CUPCAKES FOR THE UNINFORMED DEBTOR

By Alan Gassman and Lydia Greiner

I had 12 cupcakes and 3 ex-friends
When we get together, the fun never ends.

Many debtors prefer to stay out of bankruptcy for a number of good reasons, [Often, the primary reason is to avoid losing a homestead protected under state law but not under the 2005 Bankruptcy Act 10-Year Look-Back for Fraudulent Transfers or the 1215-day ownership requirement, or the 730-day residency requirement. Also, a bankruptcy discharge right will be lost forever if a bankruptcy action is filed within one year of making a fraudulent transfer.] However, under Section 303 of the Bankruptcy Code, a debtor can be forced into bankruptcy through an involuntary proceeding. It is well established under Bankruptcy Code Section 303 that it takes three qualified creditors to force a debtor into bankruptcy if the debtor has twelve or more creditors with undisputed claims that together exceed a statutorily established amount.

In determining which creditor (or three, if there are twelve or more) can force a debtor into involuntary bankruptcy, the court will evaluate the creditor's claims and whether they are non-contingent as to liability and amount and whether the claims are undisputed. [11 U.S.C. § 303(b)(1-2)]. Additionally, for a proceeding under 11 U.S.C. § 303(b)(1), the court will need to determine whether the undisputed, non-contingent claims have an aggregate value of \$15,325 [The aggregate amount required for claims is statutorily provided and is periodically adjusted to compensate for inflation: \$15,325 is the amount required for filings in 2016; "more than the value of any lien on property of the debtor securing such claims held by the holders of such claims." [11 U.S.C. § 303(b)(1)].

If there are fewer than 12 creditors, 11 U.S.C. § 303(b)(2) will apply. However, creditors proceeding under Section 303(b)(2) are still subject to some statutory requirements. The aggregate amount of the creditors' claims, for example, must be \$15,325 or more. [11 U.S.C. § 303(b)(2)]. Additionally, certain types of creditors, insiders, are not eligible to initiate the proceeding. [11 U.S.C. § 303(b)(2)]. Unlike Section 303(b)(1), there is no additional requirement under Section 303(b)(2) that the creditor's aggregate claims exceed the value of any lien on the debtor's property securing the claims by the statutorily prescribed \$15,325. [11 U.S.C. § 303(b)(2)].

Confusion arises when trying to determine what is an eligible creditor that may be counted as one of the twelve required in a Section 303(b)(1) proceeding. Whether a creditor is eligible to file for involuntary bankruptcy depends on their claim(s) against the debtor.

Although "creditor" only has one definition in these types of proceedings, [11 U.S.C. § 101(10)(A-C)]. Creditor is defined under the Federal Bankruptcy Statute as the "entity that has a claim against the debtor that arose at the time of or before the order of relief concerning the debtor;" and an "entity that has a community claim." the type of creditor qualified to file for involuntary bankruptcy may differ from those counted in determining whether the debtor has a sufficient number of holders to initiate a Section 303(b)(1). Unfortunately for debtors, the definition of "creditor" under Section 303 is not as broad as the common law definition, and there have been a significant number of inconsistent court cases.

Courts have reached different conclusions in deciding who is eligible [in addition to the statutory requirements that their claims be qualified (undisputed and non-contingent.) to count toward the required 12 or more creditors. While some illegitimate creditors may easily be identified and discounted, others require the court to examine factors related to the creditor's claim and the relationship between the debtor and creditor. These inconsistencies result in difficulty and confusion when trying to identify eligible creditors.

The primary categories of creditors that will be eliminated in determining if the 12-creditor requirement is met under a Section 303(1)(b) proceeding are as follows:

1. Creditors whose claims are contingent or not finally determined.
2. Creditors whose claims are adequately secured by collateral worth as much or more than is owed.
3. Creditors who are "insiders."
4. Creditors who owe the debtor more than the debtor owes the creditors.
5. Creditors who owe so little that the debt will not be considered to be "real."
6. Creditors who are considered to be an alter ego of the debtor.

Don't share cupcakes with insiders.
They aren't known to be providers.
You'll end up with just a wrapper,
And not feeling so dapper

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In determining the number of legitimate creditors who may trigger involuntary bankruptcy, insiders are a large group of creditors that include different individuals or entities depending on who the debtor is – a natural person, a fictitious entity, or a municipality. [11 U.S.C. § 101(31).] Although an insider is not among the creditors who are counted when determining whether the debtor has a sufficient number of creditors to trigger involuntary bankruptcy under 11 U.S.C. § 303(b)(1), they are not barred from pursuing claims against the debtor if a proceeding is initiated. [11 U.S.C. § 303(b)(2); see also *In re Little Bldgs. Inc.*, 49 B.R., 889 (B.C. N.D. Ohio, 1985). Insiders in an involuntary bankruptcy context include:

- (A) If the debtor is an individual –
 - i. Relative of the debtor or of a general partner if the debtor
 - ii. Partnership in which the debtor is a general partner
 - iii. General partner of the debtor; or
 - iv. Corporation of which the debtor is a director, officer, or person in control;
- (B) If the debtor is a corporation –
 - i. Director of the debtor;
 - ii. Officer of the debtor;
 - iii. Person in control of the debtor;
 - iv. Partnership in which the debtor is a general partner;
 - v. General partner of the debtor; or
 - vi. Relative of a general partner, director, officer, or person in control of the debtor;
- (C) If the debtor is a partnership –
 - i. General partner in the debtor;
 - ii. Relative of a general partner in, general partner of, or person in control of the debtor;
 - iii. Partnership in which the debtor is a general partner;
 - iv. General partner of the debtor; or
 - v. Person in control of the debtor
- (D) If the debtor is a municipality, elected official of the debtor, or relative of an elective official of the debtor;
- (E) Affiliate or inside of an affiliate as if such affiliate were the debtor; and
- (F) Managing agent of the debtor. [11 U.S.C. § 101(31)(A-F).]

Additionally, the requirement of “generally not paying such debtor’s debts” may resonate differently with different courts depending on where the creditors filed for the involuntary bankruptcy action. Courts will use a totality of the circumstances test and balance the interests of the parties in determining whether a creditor pursuing involuntary bankruptcy action should be dismissed. A few factors that most courts examine include: the number of unpaid claims, the amount of the claims, the materiality of the non-payments, and the debtor’s conduct in financial affairs.

Further, the court in *In re The District of McAllen* found that *ad valorem* tax authorities, insiders, persons that owe more money than they are owed, and lease deposits that are contingent do not count to make creditors eligible to join an involuntary bankruptcy action, while *de minimus* claims do count. [In *The District of McAllen LP*, case no. 14-70661 (Southern Dist. TX 2015).]

While there is no bright line rule to determine which creditors are “legitimate creditors,” in every situation involving an involuntary bankruptcy proceeding, the table on the following pages may help to provide some general guidelines.

Who is a Legitimate Creditor in an Involuntary Bankruptcy Proceeding under 11 U.S.C. § 303			
Factor or Type of Claim	Legitimate Claim?	Law	Cupcake?
Contingent claims	No	Statute: 11 U.S.C. § 303	
Subject to a bonafide dispute as to liability	No	Statute: 11 U.S.C. § 303	
Subject to a bonafide dispute as to amount	No	Statute: 11 U.S.C. § 303	
Held by insiders of the debtor* (See definition from statute above)	No	11 U.S.C. § 303	
Debtor's debt has an aggregate value less than \$15,325	No	11 U.S.C. § 303	
Employee	No	11 U.S.C. § 303(b)(2)	
Former Employee	Yes	<i>In re Demirco Group</i> , 343 B.R. 898 (B.C. C.D. Ill., 2006).	
Transferee of a voidable transfer	No	11 U.S.C. § 303(b)(2)	

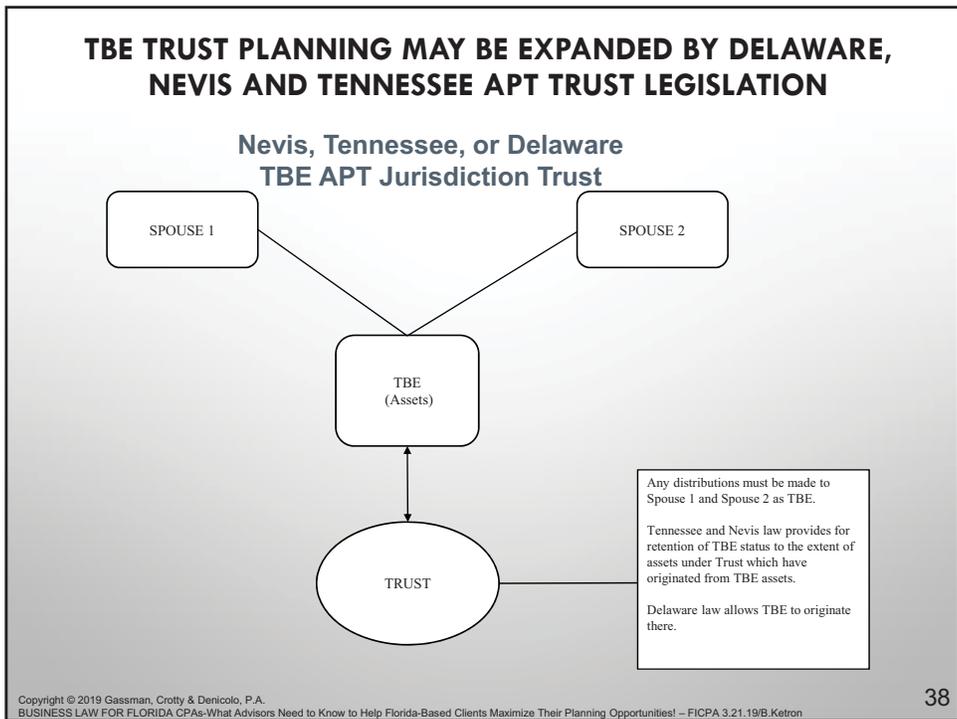
I like cupcakes,
 And I eat quite a few,
 But every so often,
 Instead I get a screw.

*Insiders are not prohibited from filing a claim against the debtor; they are only excluded from consideration in determining debtor’s legitimate creditors. [See *In re Little Bldgs. Inc.*, 49 B.R. 889 (Bankr. N.D., Ohio. 1985).]

Who is a Legitimate Creditor in an Involuntary Bankruptcy Proceeding under 11 U.S.C. § 303			
An indentured trustee representing a holder	No	11 U.S.C. § 303	
Creditor to whom debtor's debt is not yet due**	No	<i>Atlas Machine & Iron Works, Inc. v. Bethlehem Steel Corp.</i> , 986 F.2d 709 (VA Ct. App. 4, 1993).	
Lenders who make loans to debtor without formal loan documentation paperwork	No	<i>In re Smith</i> , 415 B.R. 222 (BC ND Tex, 2009).	
Debtor's Accountant	Yes	<i>In re Blaine Richards & Co.</i> , 10 B.R. 424 (B.C. E.D. NY, 1981).	
Debt for gasoline when purchased using a credit card	No	<i>In re Blaine Richards & Co.</i> , 10 B.R. 424 (B.C. E.D. NY, 1981).	
Small recurring or de minimis claims	Yes	11 U.S.C. § 303; <i>In re Elsa Designs, Ltd.</i> , 155 B.R. 859 (B.C. S.D. NY, 1993).	

** A creditor who is paid on time is unable to bring a claim against the debtor, and, thus, the claim would be subject to dispute. [See *Atlas Machine & Iron Works, Inc. v. Bethlehem Steel Corp.*, 986 F. 2d 709 (VA Ct. App. 4, 1993.)]

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WHAT ELSE CAN YOU HAVE ON YOUR CREDITOR-PROTECTED HOMESTEAD BESIDES YOUR HOME?

- Outside City Limits:
 - Property *can* qualify for homestead exemption even where the property for residency of the debtor is used for substantial and independent business activities.
 - Many cases are favorable to debtors – including mobile home parks on the property, warehouses, and rental units. But not all cases have the same favorable results.
- Inside City Limits:
 - The law is not as flexible for debtors with dual-purpose homestead properties that are within city limits, and can be very fact-specific.
 - A 2007 Bankruptcy Court opinion issued by Judge Isicoff found that while the constitution protects homestead, it limits the protection to the “residence of the owner or his family” and this protection would only apply to structures in which a member of the family resides.
 - Must own the property 1,215 days.
 - Must reside on the property 730 days.
 - Can convert one homestead into another under these rules.

BUYING THE HOUSE OR CONDO NEXT DOOR?

- An adjoining vacant lot may not be considered homestead where it has not been used or considered by logistics and fencing, etc., to be part of the homestead estate. This was the result in *In re: Estate of Ritter*, 407, So. 2d 386 (Fla. Dist. Ct. App. 3d Dist. 1981) where the property in question was never jointly fenced with the residents and was merely a separate, empty lot which served, at best, as an excess side yard to the residence.
- When clients buy adjoining homes, they will be well-advised to make sure that there are no fences between the homes and to build pathways, integrated use, and coordinated appearance from the road and otherwise to promote the concept that the two separate houses are a single homestead. The second house may be referred to as a storage/exercise/guest house.

PROTECTING THE PROCEEDS FROM THE SALE OF A HOMESTEAD FROM CREDITORS

- FROM HOMESTEAD SALE DIRECTLY INTO A NEW REPLACEMENT HOMESTEAD – Florida law will allow the proceeds of a sale of homestead to be invested in a new homestead within a reasonable period of time with continued protection.
- FROM HOMESTEAD TO OTHER EXEMPT ASSETS – Unfortunately, homestead is the one exempt asset that cannot be transferred into another type of exempt asset due to an error by the Florida Supreme Court.
- However, it is permissible to borrow on a protected homestead and transfer the proceeds to another exempt asset.



HOMESTEAD TAX PROTECTION AND PLANNING

- For some clients it is important to make sure that the Homestead tax exemption (up to \$50,000) and the 3% cap per year or the Consumer Price Index, whichever is less, on valuation increases for property tax purposes will be available.
- It is possible for the homestead to be owned by an irrevocable trust for the beneficial interest of one party while receiving the homestead exemption attributable to the home being resided upon by another party who signs a ninety-nine (99) year lease on the property.
- Recent legislation allows an individual owning a homestead with a value significantly greater than the capped Tax Assessor value described above to “port” the advantages of the exemption they have in one house into a replacement house based upon some fairly complicated rules.

OTHER UNIQUE HOMESTEAD STRATEGIES

- Separate homesteads for separated spouses (but for tax exemption purposes, counties will require separate income tax returns, and that each spouse is separately supporting himself or herself).
- Mobile homes, houseboats, and other unique homesteads.
- Placing homestead in the name of another.
- Remember the 2005 Bankruptcy Act 1,215 day ownership rule and 730 day occupancy rule – homestead is only protected in bankruptcy for up to \$160,375 per debtor if it has not been owned for 1,215 days and occupied for 720 days before filing. (See subsequent slide.)

Also, there is a 10 year look back on fraudulent transfers into a homestead once the debtor is in bankruptcy. Stay out of bankruptcy by having at least 12 creditors. If the debtor has 12 creditors it takes 3 of them to force the debtor into bankruptcy.

HOMESTEAD DISPOSITION/DEVISE LIMITATIONS

- The Florida Constitution prevents a married homeowner from transferring or mortgaging the homestead property without the consent of the owner's spouse, or an appropriate waiver. Consider using an LLC to avoid such requirements.
- The Florida Constitution restricts the devise of the homestead on death if the owner is survived by a spouse or minor child, except that homestead may be devised to the owner's spouse if there is no minor child, or may be owned jointly with right of survivorship with a spouse.
- However, the Florida Constitution does not address how homestead property descends upon the death of the owner of the homestead. The descent of homestead property is controlled by Fla. Stat. 732.401, which now gives the surviving spouse a choice (effective October 1, 2010):
 - a life estate (the right to live there for life) with remainder interest owned by the decedent's descendants; or
 - a 50% tenant in common interest between the spouse and decedent's descendants.

Spousal Homestead Waivers Through Deed

On March 19, 2018, Governor Rick Scott approved Senate Bill 512, which creates Section 732.7025, Florida Statutes. Under this new provision a spouse may waive the his/her right to inherit homestead property through the execution of a deed, which would otherwise prevent the devising spouse from devising the homestead property to someone other than the spouse.

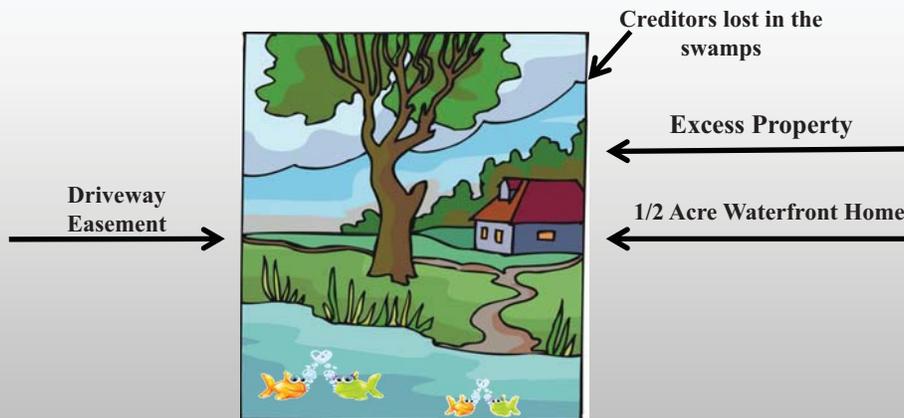
This statute requires the following language or substantially similar language to be included in the deed:

By joining this Deed, I intend to waive homestead rights that would otherwise prevent my spouse from devising the homestead property devised in this Deed to someone other than me.

This statutory waiver codifies case law which deemed attempts to waive spousal interests in the homestead valid. This waiver language is not a waiver of the protection against the owner's creditor claims during the owner's lifetime and after death. Additionally, the language is not a waiver of the restrictions against alienation by mortgage, sale, gift, or deed without the joinder of the owner's spouse.

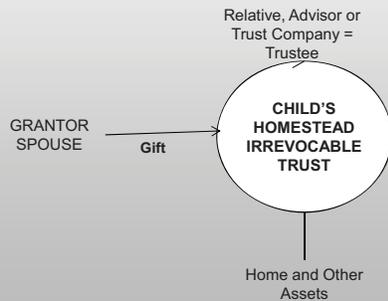
This legislation is projected to provide more certainty and predictability for Florida residents when it comes to planning for the disposition of their constitutionally protected homesteads.

Segregated Homestead Planning



CHILD'S HOMESTEAD IRREVOCABLE TRUST

- Can own a home used by a child to benefit the spouse and descendants
- Can qualify for the State Homestead Exemption and 3% cap
- Can be considered as owned by the Child for income tax purposes to qualify for the \$250,000 income tax exemption on sale
- Can be controlled by the Trustee and used for the benefit of various family members
- Will insulate family members from liabilities associated with ownership of the home



Trust assets can be applied for the health, education, maintenance and support of the Trustee-Spouse and children.

One or more children may reside in the house to qualify for the Florida Tax Homestead Exemption.

For income tax purposes, the Trust can be considered as owned by the child who lives in the house so that the house can be sold income tax free to the extent of up to \$250,000 in appreciation.

The Trust will not be subject to creditor claims of any family member unless (1) the transfer to the Trust by the Grantor Spouse is a "fraudulent transfer," or (2) the child has a right to withdraw more than the gift tax exclusion amount in any calendar year.

NOTE – The Trust must be appropriately drafted, funded, and administered to achieve the above results.

COMPARISON OF METHODS TO PURCHASE HOMES FOR THE CHILDREN

	\$250,000 Exemption on Sale of Home	\$50,000 Homestead Exemption and 3% Per Year Cap on Valuation	Divorce	Control	Notes
Father and Mother loan money to the child. Child purchases and owns home.	Child gets income tax exemption.	Child gets homestead exemption and cap.	Loan will be repaid to parents. Equity may be subject to claim by spouse if this is not waived by Prenuptial Agreement.	Child controls the house. However, we may be able to call the Note to force a sale.	Note: Child gets equity above Note.
Father and Mother own the home and the child lives in the house.	No.	Generally no. However, it may be possible to obtain these with a 99-year lease.	Better protected.	Father and Mother control.	
Via Child Funded Homestead Bypass Trust.	Child gets income tax exemption.	Child gets homestead exemption and cap.	Better protected.	Friend, relative, advisor or trust company would be Trustee of the Trust and would retain control.	Note: Creditors may be able to get into the Trust. It may be possible for Trustee to transfer the house to the child's individual name in the event of a Creditor issue.
Direct Client Funded Homestead Bypass Trust.	No	Child gets homestead exemption and cap.	Better protected.	Mother would be Trustee of the Trust and would retain control.	Note: The \$250,000 exemption is lost, but no creditor of the child should be able to get the assets.
One-half purchased by child and one-half owned by Father and Mother.	One-half.	One-half.	One-half, better protected.	Each controls one-half.	

TENANCY BY THE ENTIRETIES

- Tenancy by the entireties (“TBE”) “immunity” dates back to the English common law and the time when a married woman could not hold property individually. TBE was a form of property whereby a husband and wife could hold property as an indivisible unit.
- An ownership interest in TBE property is non-severable without consent of both spouses, except in limited situations. **The property is not divisible on behalf of one spouse alone, and therefore cannot be reached to satisfy the obligations of only one spouse.** However, creditors owed monies by both the husband and the wife can attach the TBE property.
- States other than Florida which recognize TBE, at least to some extent, include Arkansas, Delaware, Michigan, Pennsylvania, Rhode Island, Washington, D.C., Missouri, Tennessee, Hawaii, and Vermont. Where one spouse lives in Florida and another spouse lives in one of the other states that recognize TBE property, most likely the creditor protection will apply for the Florida resident spouse. The treatment of the other spouse will be subject to the law of where the other spouse resides.

DEFINITION OF TENANCY BY THE ENTIRETIES

Joint tenancy with right of survivorship is not enough – TBE requires “the 6 unities:”

1. Unity of possession - both spouses have joint ownership and control.
2. Unity of interest - each spouse has the same interest in the account.
3. Unity of time - the interests of both spouses in the asset must originate simultaneously
4. Unity of title - both spouses must have ownership under the same title.
5. Survivorship - on the death of one spouse, the other spouse becomes the sole owner of the TBE property. A general power of appointment given to one spouse over joint assets may vitiate TBE status.
6. Unity of marriage - of course, the owners must be legally married under Florida law.

Non-residents who own property in Florida can also claim the tenancy by the entireties immunity. *In Re Cauley*, 374 B.R. 311, 316 (Bankr. M.D. Fla. 2007)

DIRECT TRANSFERS FROM ONE SPOUSE TO TENANCY BY THE ENTIRETIES

- Is a straw man needed?
- The author has done significant reading and research with respect to this issue, and has concluded that one spouse can transfer virtually any kind of asset into tenancy by the entireties
- Case law confirms that one spouse is a separate entity from a TBE, and can, therefore, transfer property to the marital unit without the use of a strawman, as explicitly held in the 1939 Florida Supreme Court decision of *Johnson v. Landefeld*, 138 Fla. 511 (Fla. 1939).
- Florida case law may not allow one spouse to add another spouse to an existing bank account or stock certificate. However, that is different than one spouse making a distinct transfer from himself or herself to facilitate the creation and funding of a new TBE account, stock certificate, or other asset.

LLC OPERATING AGREEMENTS CAN SERVE AS “TRANSFER ON DEATH” MECHANISM TO AVOID PROBATE AND TRUST INTERACTION (NOT TO MENTION CONFUSION & UNCERTAINTY)

By Alan Gassman and Chelsea Bellew

In *Blechman v. Estate of Blechman*, 460 So. 3d 152 (Fla. 4th DCA 2015) provisions of an Operating Agreement of a limited liability company caused the Decedent’s membership interest to vest immediately upon his death.

While the Decedent made provisions for the membership interest to pass to someone outside his family in a trust before he passed away, the court found that the provisions of the Operating Agreement were controlling. The provisions of the Operating Agreement were designed to keep the company within the family and did not permit for a membership interest to pass to anyone else.

The Operating Agreement was executed in New Jersey and was, therefore, interpreted according to New Jersey case law. *Minoff v. Margetts* was a New Jersey case that permitted members of an LLC to use provisions in an Operating Agreement to control the disposition of membership interests when one member passes away. Following this rationale, the court found that the interest in this case vested in the two children upon the death of their father, according to the Operating Agreement, and that this interest was not a part of his estate. The trust had an amendment that provided for the interest in the LLC to pass to the Decedent’s girlfriend upon his death, and the court found that this instrument was subordinate to the provisions of the Operating Agreement. The provisions of the trust directly contradicted the terms and intent of the Operating Agreement. Therefore, the Decedent’s membership interest in the LLC passed upon his death outside of probate to his children and nullified the terms of the amended testamentary trust.

The specific language in the Operating Agreement that was approved by the court was as follows:

6.3 Death of Member

- (a) Unless (i) a Member shall Transfer all or a portion of his or her Membership Interest in accordance with 6.1 or 6.2 hereof, or (ii) a Member bequeaths the Membership Interest in the Member’s last will and testament to members of the Immediate Family of the respective Member, or (iii) all such Membership

Interests of a deceased Member are inherited, or succeeded to, by Members of the Immediate Family of the deceased Member, then in the event of a death of a Member during the duration of this Agreement, the Membership Interest of the deceased Member shall pass to and immediately vest in the deceased Member's then living children and the issue of any deceased child, per stirpes.

The court noted as follows:

...not every instrument which provides for performance at or after death is testamentary in character...There is nothing in the statute of wills that prevents the creation of contract of a bona fide equitable interest in property and its enforcement after the death of a contracting party, even though the date of death is agreed upon as the time for transfer.

Do we now have an obligation to review every Operating Agreement that a client has involvement with to see whether inheritance rights and disposition may be impacted thereby? Do we dare use similar language in an LLC Operating Agreement that might distort an estate plan later when the client or their advisors are not aware of the provision?

Perhaps the following provision can be considered:

Upon the death of JOHN SMITH, his membership interest shall immediately pass to and immediately vest in his spouse, MARY SMITH, or in equal shares to his children, per stirpes, if MARY SMITH does not survive him, provided that the above shall not apply to the extent of any future provision of any Will or Pour-Over Will and Revocable Trust that might be entered into by JOHN SMITH, if the legal effect thereof would be to provide for a different disposition of his LLC interest, regardless of whether such LLC interest is specifically referred to or not. The determination of whether any such subsequently signed separate Will or Revocable Trust exists to facilitate such change shall be made by the Manager or Managers of the Company, in their reasonable discretion, and the Company shall be entitled to the distributions or liquidation entitlement rights to the successor owners of the membership interest to the extent of money expended to facilitate such determination.

Should we consider using similar arrangements for our clients, and, if appropriately used, will these avoid exposure to individual creditors of the deceased LLC Member?

CREDITOR PROTECTION FOR WAGES

- Florida Statute 222.11 protects earnings (which include compensation paid or payable, in money of a sum certain, for personal services or labor whether denominated as wages, salary, commission, or bonus) of a head of family (which is any natural person providing more than one-half of the support for a child or other dependent),
- The first \$750 per week of such disposable earnings are absolutely exempt from attachment or garnishment, and anything above that amount will not be subject to attachment or garnishment unless such person has agreed otherwise in writing (and the writing meets the specific requirements for waiver of wage exemption under the statute).
- The waiver of wages as an exempt asset may only apply to wages earned after the lender has a judgment against the debtor or possibly will apply only wage checks themselves, and not to wage accounts that might be funded immediately, or even by direct deposit, by an employer.
- Exempt earnings that are deposited in any financial institution are exempt from attachment or garnishment for six months after the earnings are received by the financial institution **if the funds can be traced and properly identified as earnings.**
- Why not deposit the wages into a TBE account, an annuity contract, or another vehicle that is exempt for more than six months?

DISABILITY INSURANCE AND DISABILITY INSURANCE PROCEEDS

- Florida Statute Section 222.18 exempts disability payments from creditors.
- Even lump sum proceeds resulting from settlement of a claim against a disability carrier will be exempt according to the Florida Supreme Court. Zuckerman v. Hofrichter & Quiat, P.A., 646 So.2d 187 (Fla. 1994).

PENSION PLANS AND IRAS ARE PROTECTED

- Florida Statute 222.21 provides immunity from the creditors of any owner, participant in, or beneficiary of any money or assets payable to an owner, a participant, or a beneficiary from, a fund or account that is maintained in accordance with any plan or governing instrument pre-approved by the IRS as exempt from taxation under specified sections of the Internal Revenue Code.
- This Florida statute provides exemption for pension, IRA and other “retirement accounts” which qualify under Internal Revenue Code Sections 401(a), 403(a), 403(b) and 408, 408A, 409, 414, 457, and 501(a). The new Bankruptcy Code provisions protect plans which are provided under Sections 401, 403, and 408.
- Further, creditor immunity is provided for pension plans that have received determination letters from the IRS. These protected plans must be maintained in accordance with the applicable rules for tax qualification.

PENSION PLANS AND IRAS ARE PROTECTED (CONT.)

- The legislature confirmed by statutory change of Florida Statute Section 222.21 that beneficiaries of pension IRA and other qualified retirement accounts can receive these and maintain them as a creditor exempt asset, notwithstanding that the beneficiary may have personal creditors.

Beneficiaries who reside outside of Florida will only be protected if similar protection applies in their home state.

The above statutory change retroactively overrode a widely criticized 2009 Second District Court of Appeal Decision (Robertson v. Deeb, 16 So. 3d 936).

- But what about for beneficiaries who reside in states that do not protect IRS proceeds.
- Better in many cases to have IRA and pension benefits payable to protective trusts with “stretch provisions” or “conduit trusts” in many cases

ANNUITY CONTRACTS

- Florida offers unlimited protection of life insurance and the cash values of annuity contracts. The life insurance and annuity industries have come to market with mutual fund wrapped products that provide income tax deferral and creditor protection for policyholders and their families.
- Florida Statute Section 222.14 provides as follows:

Exemption of cash surrender value of life insurance policies and annuity contracts from legal process. – The cash surrender values of life insurance policies issued upon the lives of citizens or residents of the state and the proceeds of annuity contracts issued to citizens or residents of the state, upon whatever form, shall not in any case be liable to attachment, garnishment or legal process in favor of any creditor of the person whose life is so insured or of any creditor of the person who is the beneficiary of such annuity contract, unless the insurance policy or annuity contract was effected for the benefit of such creditor.

This applies to variable annuities pursuant to a Florida Supreme Court decision.

HOW ABOUT PRIVATE ANNUITY AND GRAT PAYMENT RIGHTS?

- Some states, such as Florida and Texas, have statutes which protect annuity contract rights from creditors. It is widely believed that GRAT payments can qualify as a creditor-protected annuity asset under Florida Statute Section 222.14 if properly drafted.
- “The intent of the Grantor is to provide for issuance of an annuity contract to the Grantor based upon the terms of this Agreement, with such issuance to occur simultaneously with funding hereof in order to qualify such annuity payment rights as a qualified interest, as defined in Section 2702(b) of the Code, and as a qualified annuity interest, as defined in Sections 25.2702-3(b) and (d) of the Treasury Regulations, and this Trust shall be administered and construed accordingly. The Grantor is not retaining any rights to distributions to or for the benefit of the Grantor from the Trust assets other than the above-stated annuity payment right.”
- For more detail on this issue under Florida law, see the July/August 2009 Florida Bar Journal article “Creditor’s Rights Under Private Annuities and Grantor-Retained Annuity Trusts in Florida” by Alan S. Gassman, David L. Koche and Michael C. Markham.
- Consider going offshore by having a trust company in Nevis, Belize or another asset protection jurisdiction serve as Trustee of the Trust.
- Make sure that trusted, independent individuals are appointed as Trust Protectors of the Trust.

LIFE INSURANCE

- The life insurance exemption language is contained in Florida Statute 222.14:

The cash surrender values of life insurance policies issued upon the lives of citizens or residents of the state and the proceeds of annuity contracts issued to citizens or residents of the state, upon whatever form, shall not in any case be liable to attachment, garnishment or legal process in favor of any creditor of the person whose life is so insured or of any creditor of the person who is the beneficiary of such annuity contract, unless the insurance policy or annuity contract was effected for the benefit of such creditor.
- This is a shield against any creditor of the person whose life is so insured. It is not a shield for a debtor who owns a life insurance policy on someone else’s life!
- It is also not a shield for the beneficiary of the policy. **In *In re Zesbaugh*, 190 B.R. 951 (Bankr. M.D. Fla. 1995). Better to have the policy payable to protective trusts than individuals or other entities!**

MISCELLANEOUS EXEMPTIONS

- Alimony rights are not subject to garnishment according to one case that was based on the public policy of not having an ex spouse be dependent upon the state.
- Unemployment compensation benefits as defined in Florida Statute Section 433.051(2) are exempt from all claims of creditors.
- Florida Prepaid Tuition Fund and 529 Plans are not subject to attachment, garnishment or legal process pursuant to Florida Statute Section 222.22.
- Up to \$5,000 of personal assets, but reduced to \$1,000 if homestead protection is used in bankruptcy.

WATCH OUT FOR SUPER CREDITORS

- IRS
- Department of Justice – when pursuing under federal statutes that allow injunctions or expropriation.
- FTC
- SEC
The 2010 case of SEC v. Solow, 682 F. Supp.2d 1312 (S.D. Fla. 2010) permitted the SEC to enforce a Disgorgement Order despite the otherwise applicable Florida creditor exemptions.
- Family Law Judges – but when homestead or tenancy-by-the-entireties is owned with next spouse – can it be invaded?

DEATH IS NOT THE END

- Pursuant to Florida Statute Section 732.402, the statutory creditor exemptions extend after death to the debtor's probate estate. "If a decedent was domiciled in this state at the time of death, the surviving spouse, or, if there is no surviving spouse, the children of the decedent shall have the right to a share of the estate of the decedent...to be designated 'exempt property.'" Fla. Stat. 732.402(1).
- The exempt property can be protected by a trust. In general, a court may authorize a creditor of the beneficiary to reach the beneficiary's interest in a trust. (Fla. Stat. 736.0501) But a beneficiary's interest can be protected from their creditors by a discretionary or a spendthrift clause in the trust. Also, property in a "revocable trust is subject to the claims of the settlor's creditors during the settlor's lifetime to the extent the property would not otherwise be exempt by law if owned directly by the settlor." (Fla. Stat. 736.0505) Property in an irrevocable trust may be reached by the settlor's creditors up to the maximum amount that can be distributed for the settlor's benefit. *Id.*

DEATH IS NOT THE END (CONT.)

- Property that is exempt from creditor claims of a decedent's estate under Fla. Stat. 732.402 includes up to 2 motor vehicles, not exceeding 15,000 pounds each, held in the decedent's name, and regularly used by the decedent, or his immediate family, as their personal motor vehicle as defined in Florida Statute Section 316.003 (21) (Any self-propelled vehicle not operating upon rails or guideway, but not including any bicycle, motorized scooter, electric personal assisted mobility device, or moped). Also, household items in the decedent's usual home are protected up to a net value of \$20,000 under Florida Statute Section 732.402(2)(a). Other exemptions under Fla. Stat. 732.402 include qualified tuition programs authorized by section 529 of the Internal Revenue Code and all teacher and school administrator death benefits paid pursuant to Fla. Stat. 112.1915.
- Also, exempt property under Florida Statute Section 732.402 is "in addition to protected homestead, statutory entitlements, and property passing under the decedent's will or by intestate succession."

CHARGING ORDER PROTECTION- WHAT IS A CHARGING ORDER?

- Most states have laws providing that the creditor of a limited partner of a partnership may not seize any portion of the partner's ownership interest, if the limited partner individually has a creditor. Most states also have similar laws that are applicable to the membership interests of a member in a limited liability company.
- The creditor may instead receive a Court Order (a "Charging Order"), which forces the partnership to make distributions that would normally be paid to the debtor limited partner to the creditor to the extent of the limited partner's indebtedness to the creditor. Again, this concept is also applicable to a member's membership interests in a limited liability company.
- Typically, the Court will not have the authority to mandate if or when the limited partnership would make such distributions.
- As stated above, a charging order prohibits a creditor from exercising any rights otherwise held by the debtor, such management, alienation and governance rights, but does permit the creditor to receive distributions that would normally go to the debtor limited partner.
- Must have member who does not owe money to the creditor (a multiple member LLC) for protection to apply.
- Florida provides that a Charging Order is the exclusive remedy for creditors of a debtor limited partner in a limited partnership or a debtor member in a limited liability company

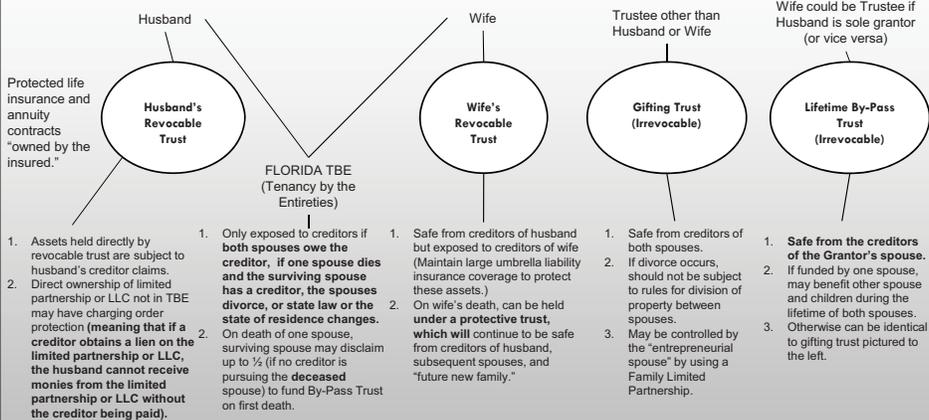
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DETERMINING HOW TO BEST ALLOCATE ASSETS AS BETWEEN A MARRIED COUPLE - PART I

General Rules:

- Typically want each trust funded with at least \$11,200,000 worth of assets on death for estate tax planning.
- May be funded from 1/2 of tenancy by the entireties assets via disclaimer and probate or by life insurance/pension/IRA assets.



SEE NEXT PAGE FOR SECOND TIER PLANNING

A COMMON SOLUTION - to use a limited partnership or similar mechanisms and have no assets directly in the "high risk" spouse's trust, half to two-thirds of the assets held as tenants by the entireties, and half to two-thirds of the assets directly in the "low risk" spouse's trust.

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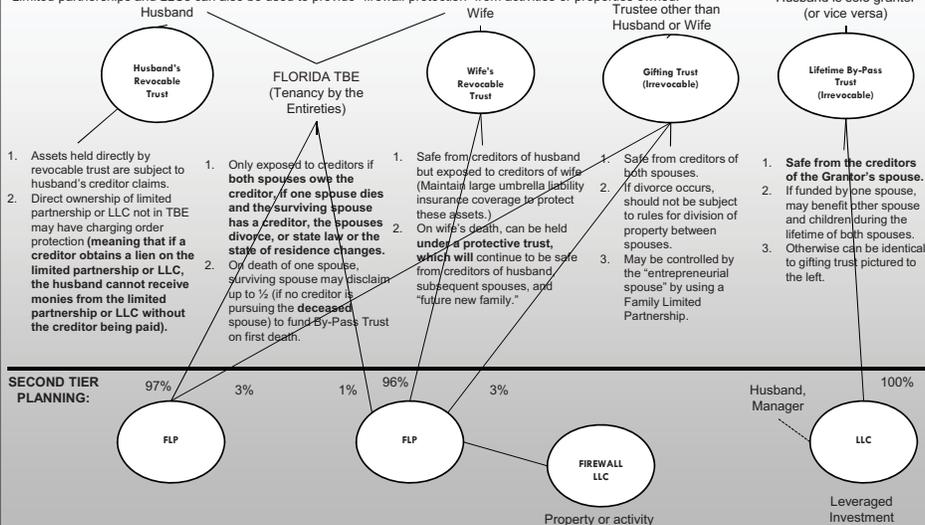
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DETERMINING HOW TO BEST ALLOCATE ASSETS AS BETWEEN A MARRIED COUPLE - PART II

Subsidiary Entity Techniques:

-Limited partnerships and LLCs can be used to facilitate discounts, for estate tax purposes, and for charging order protection.
 -Limited partnerships and LLCs can also be used to provide "firewall protection" from activities or properties owned.

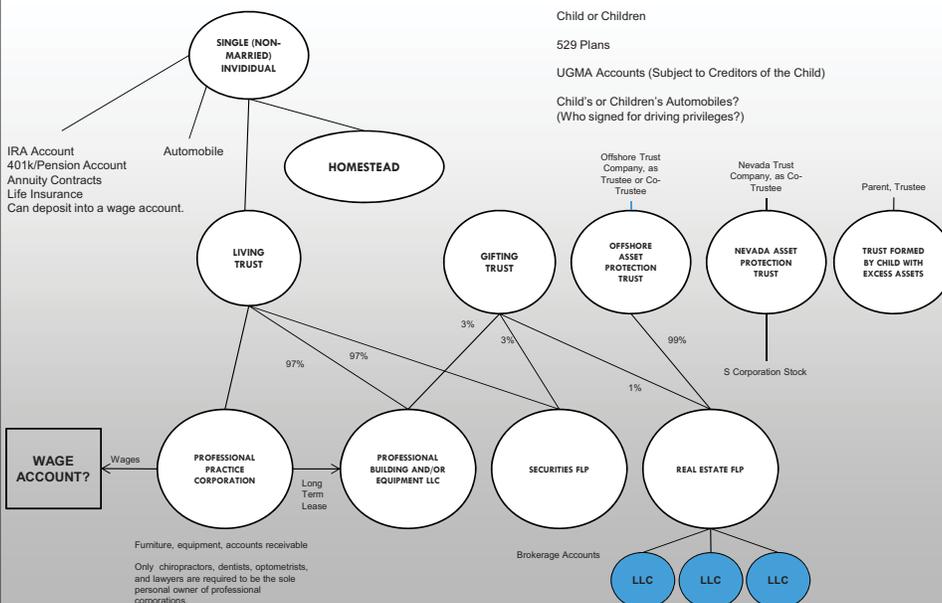
Wife could be Trustee if Husband is sole grantor (or vice versa)



A COMMON SOLUTION - to use a limited partnership or similar mechanisms and have no assets directly in the "high risk" spouse's trust, half to two-thirds of the assets held as tenants by the entireties, and half to two-thirds of the assets directly in the "low risk" spouse's trust.

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WHERE DO TRUSTS FIT IN LOGISTICALLY? ESTATE AND ASSET PROTECTION PLANNING FOR THE SINGLE PROFESSIONAL



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FLORIDA LIABILITY PLANNING- VEHICLE LIABILITY

Under Florida Statute Section 324.021(9)(b)(3), the owner of a car can be held vicariously liable for the negligence of any permitted driver. However, the law limits liability of an individual owner where the driver has insurance with a large amount of coverage. If a driver has at least \$500,000 of liability insurance coverage, then the automobile owner is only liable for up to \$100,000 per person, up to \$300,000 per incident for bodily injury, and up to \$50,000 per incident for property damages, all of which will be satisfied by payment made by the liability insurance carrier providing the coverage described above. However, if the permissive user does not have sufficient liability insurance coverage, then the vehicle owner may be liable for an additional \$500,000 in economic damages, but the economic damages responsibility is reduced by amounts actually recovered from the driver and from any insurance or self-insurance covering the driver. It is not clear under the statute whether joint owners will have any limitation on liability for one another's driving negligence even when there is \$500,000 of insurance in place. Also, this limitation statute does not apply to situations where an automobile has been "negligently entrusted" to an inexperienced or known dangerous driver, or where the accident occurs outside of Florida.

FLORIDA LIABILITY PLANNING- VEHICLE LIABILITY

1. Owner of the vehicle is responsible.
2. Possible exception if driver has \$500,000 of liability coverage and owner is an individual who did not negligently entrust use of the car to the driver.
3. Parent must take minor to obtain driver's license and sign an unconditional guarantee that will apply until age 18.
4. Use Uber instead!

FLORIDA LIABILITY PLANNING- BOAT LIABILITY

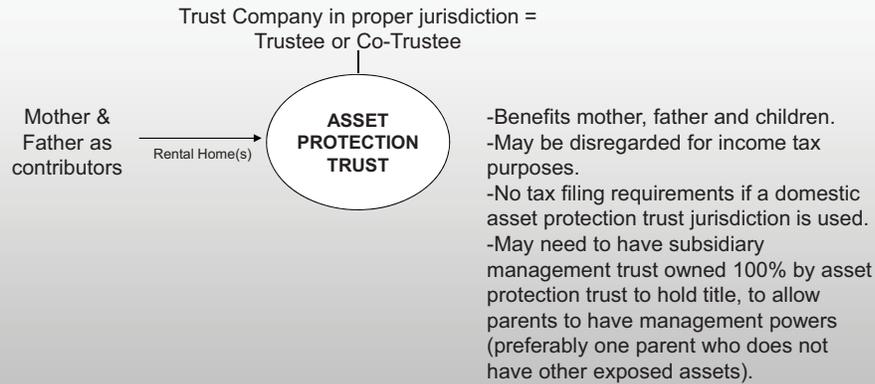


The owner of the boat is responsible if on the boat at the time of the accident, whether piloting or not.

FLORIDA LIABILITY PLANNING LANDLORD INSULATION FROM POTENTIAL LIABILITY

- A landlord is generally responsible for injuries on leased property if the landlord maintains a possessory interest or control over the property that contains a defect resulting in injury.
- Giving a tenant authority to make changes to property can be dangerous from a contractual standpoint, but also necessary to insulate the landlord from premises liability.
- However, do not let your clients give total control to a tenant who may cause significant financial liability as a result of this type of authority.
- A provision to limit landlord liability may be helpful and is found in the full materials.
- Clients might consider other ways of protecting real estate from potential liability, including having plenty of insurance, checking regularly to make sure the tenant is maintaining required liability insurance, keeping the property leveraged with debt, and owning it in a limited liability entity.

LIMITED LIABILITY TRUST – ASSET PROTECTION TRUST



FLORIDA LIABILITY PLANNING- WHAT MARY POPPINS DIDN'T KNOW ABOUT UMBRELLAS



What Mary Poppins Didn't Know
About Umbrellas: Ensure That Your
Insurances Will Insure You
Thursday, August 25, 2011
5:30 p.m.



Charles L. Wasson, III, CPCU
Sandy Wasson & Associates Insurance, Inc.
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UNDERSTANDING YOUR LIABILITY INSURANCE COVERAGE

The vast majority of carriers will only issue a \$250,000 policy on your home, a \$250,000 policy on your driving, and a \$250,000 policy on your vacation home.

A separate "umbrella carrier" or "carriers" will then issue separate policies for above \$250,000, as shown in the example below.

Sometimes a carrier will write two or more of the below described policies, but often there will be 3 or more carriers involved and coordination can be a challenge:

\$5,000,000 or more 	Umbrella Policy #1 Covers claims for home at \$300,000 and for cars at \$250,000 Must be "drop-down" umbrella if home policy is issued by Citizens or a comparable state agency that does not cover liabilities from pools, pets, or other notable exceptions.		\$5,000,000 or more 	Umbrella Policy #2 May need separate umbrella for out-of-state vacation home, large boats or other items. 	
\$251,000 	\$250,000 	\$0	\$300,000 	\$0 	\$0 
	Policy #1 - Homeowners	Policy #2 - Vacation Home	Policy #3 - Car and Driver Owner Policy	Policy #4 - Big Boat at Vacation Home	

FLORIDA LIABILITY PLANNING- USING LLCs TO AVOID LIABILITY

- Commonly companies will establish subsidiary LLCs to own and operate vehicles, and then manage these LLCs at arms length. The Florida Supreme Court made it difficult for creditors to pierce a related company that is held separately in the decision of *Dania Jai-Alai Palace, Inc. v. Sykes*, 450 So. 2d 1114 (Fla. 1984). This decision indicated that actual fraud must be shown in order to pierce the corporate veil. As a result, related brother/sister or parent subsidiary arrangements are often used, while being disregarded for income tax reporting purposes.
- In *Kane Furniture Corp. v. Miranda*, 506 So. 2d 1061 (Fla. 2d DCA 1987), the court determined that a carpet installer was an independent contractor for Kane when, after leaving a bar where he had been drinking for hours, he hit and killed another driver. Using the control test from agency law, the court determined he was not an employee of Kane, and therefore Kane could not be vicariously liable.

MAINTAIN CORPORATE IDENTITY MEMO TO CLIENTS

Even the most careful corporate advisors and managers can use an occasional word or two of advice about how to guard and maintain corporate identity. A brief memo touching on the high points is good preventive law and good client relations. Here are some points to touch on:

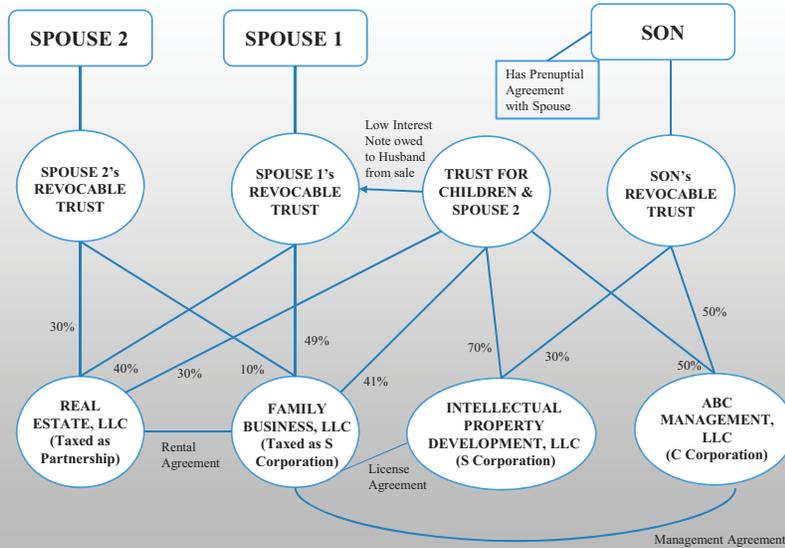
- Keeping up annual report filings;
- Organize annual corporate meetings. Record minutes of the annual meeting.
- Maintain adequate corporate accounting records.
- File corporate tax returns in a timely manner.
- Operating only under registered names;
- Making sure that third parties dealing with the business know that it's a corporation;
- Maintaining fictitious name filings;
- Not giving personal guarantees or otherwise risking personal liability;
- Keeping all financial transactions involving the corporation separate from personal financial matters;
- Maintain adequate capital in a corporation.
- Carrying appropriate insurance for company vehicles;
- Documentation of indebtedness to shareholders;
- Periodic updating of corporate pension plans;
- Documentation in the corporate minutes of significant capital transactions; and
- Arm's-length leases.

IT'S A SAFE BET that the managers of all of your corporate clients know the importance of maintaining corporate identity. They know that doing business in the corporate form has several crucial advantages and protections that can be the business's lifeline. But even if they do realize the importance of maintaining corporate identity, do they know how to structure day-to-day business affairs in a way that will keep that identity intact? Do they know which formalities are the really crucial ones? And do they know how to avoid common practices that jeopardize that identity? Below is a copy of a memorandum that our firm sends to its corporate clients and advisors to help them to take steps to protect their corporate identities. You might want to consider raising some of the same points with your own corporate clients and their advisors.

KEY PRACTICE CREDITOR PROTECTION STRATEGIES

1. Keep valuable assets outside of the practice entity.
2. Let creditors of the practice entity have a first lien on lienable assets.
3. Let the practice entity guarantee debt owed by other entities and pledge its assets as collateral for the debt.
4. Let the practice entity enter into long term leases that allow landlords to accelerate rent owed in the event of insolvency, and give landlords a lien on practice assets.
5. Give shareholders a lien on practice assets to secure their right to deferred compensation.
6. Consider New Parent F Reorganization.
7. Consider an ELOPE system to protect letters of protection or large accounts receivable.
8. You cannot have too much insurance.
9. Consider keeping separate entities, having separate functions and assets, while also complying with medical billing and associated laws.

POSSIBLE FAMILY LOGISTICS FOR A SUCCESSFUL BUSINESS AND ESTATE PLAN



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**FLORIDA LLC STATUTE (CHAPTER 605)
 WAS SIGNIFICANTLY CHANGED
 EFFECTIVE JANUARY 1, 2015**

- Intended to eliminate confusion caused by having “member managed LLCs formed by layman. Most planners prefer “manager-managed” LLCs.
- Articles of Organization can have an effective date that is five days before the date of filing.
- A “Statement of Authority” can be filed in the public records to require third party approval of any transfer or action.

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FLORIDA LIABILITY PLANNING CANADIANS INVESTING IN FLORIDA LLCs

- Florida has many Canadian investors who invest in Florida LLCs and expect disregarded entity characterization to apply in their Canada tax filing. Unfortunately, Canada treats LLCs like C corporations instead of pass-through entities, exposing Canadian taxpayers to double taxation.
- One way to prevent double taxation for Canadians is to use a Limited Partnership or a Limited Liability Limited Partnership in lieu of an LLC, and many LLCs have converted to Limited Liability Limited Partnerships upon realization of the above.

PRACTICE AND BUSINESS ENTITIES AND HOW THEY CAN BE TAXED



1. Taxed as S corporation or C corporation.
2. S corporations pay no tax unless they used to be a C corporation and certain circumstances exist. The income and deductions of an S corporation flow through to the shareholders pro rata to ownership.
3. A C corporation is taxed as a separate entity and if it is a professional service company, all net income is taxed at the highest bracket (21%).
4. No charging order protection.

\$35 filing fee
\$150 annual report fee



1. Only 1 member for tax purposes - disregarded for federal income tax purposes. But may have a Taxpayer Identification Number.
2. If 2 or more members for tax purposes – taxed as a partnership. A partnership is taxed in a manner similar to an S corporation, but with major differences.
3. Can elect to be taxed as an S corporation or a C corporation for federal income tax purposes. To have corporate tax treatment a Form 8832 must be filed with the IRS.

\$125 LLC filing fee
\$138.75 LLC annual report fee

\$1,000 LP/LLLP filing fee
\$500 LP/LLLP annual report fee

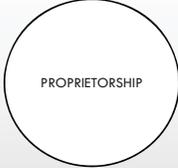


1. Can be disregarded if considered to have one member (such as if an individual owns 50% and his or her revocable trust owns 50%)
2. Taxed as a partnership if 2 or more members.
3. No charging order protection.

No filing required for general partnership.

\$50 LLP filing fee
\$25 LLP annual report fee

BASIC INCOME TAX OPERATION OF EACH TYPE OF ENTITY

Shareholder (Dividends are taxed)	Shareholder (Dividends are not taxed)	Partners (Individuals, S corporations or otherwise) (Distributions are not taxed)	
			
<p>Corporate level tax – revenues minus deductible expenses.</p> <p>Dividends are not deductible expenses.</p> <p>May deduct healthcare and disability insurance expenses under certain circumstances.</p> <p>In the highest individual tax bracket on the first dollar of income if this is a personal service company.</p>	<p>Income and deductions are computed and then go on income tax returns of owners by K-1 reporting.</p> <p>There can only be one class of stock, but voting/non-voting is permitted.</p> <p>Contribution of appreciated assets can trigger tax unless the 80% rule is followed under IRC Section 351</p> <p>Income is triggered if an appreciated asset or accounts receivable are transferred from the S corporation to shareholders unless it is deductible compensation.</p> <p>Special rules apply if an S corporation used to be a C corporation. This can cause double tax.</p> <p>Shareholder might be afforded the benefit of the 20% Section 199A deduction.</p>	<p>Income and deductions are computed and then go on income tax returns of owners by K-1 reporting – no entity level tax.</p> <p>Distributions to partners are usually subject to employment taxes</p> <p>Compensation paid to partners is often called “guaranteed payments” and reduces partnership income</p> <p>Typically no income tax is triggered when appreciated assets are contributed to the partnership in exchange for a partnership interest</p> <p>Typically no gain is triggered when the partnership transfers appreciated assets to its partners to redeem their ownership interests.</p> <p>Partner might be afforded the benefit of the 20% Section 199A deduction.</p>	<p>All income and deductions are shown on individual’s Form 1040 Schedule C – subject to employment taxes of 12.4% on the first \$128,400 of income, plus the 2.9% Medicare tax, making for a 15.3% tax thereon, plus the 2.9% Medicare tax on income from \$128,400 and an additional 0.9% Medicare tax to the extent of self-employment income that exceeds \$200,000 for a single taxpayer and \$250,000 for a married taxpayer.</p> <p>Owner might be afforded the benefit of the 20% Section 199A deduction.</p>
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10 COMMON LLC PLANNING ERRORS

1. “Tenancy by the entirety” designation that will not qualify as tenancy by the entirety.
2. Entity documents can disqualify S election.
3. Failure to plan for cash or other distributions/failure to use an intermediary entity. Consider using an intermediary entity – don’t make a family limited partnership or family LLC responsible per capital call, indemnification, or even possibly clawback situations.
4. Forced sale provisions.
5. We “formed it ourselves” – or “my accountant took care of this.”
6. Assuming that limited liability companies are as well protected as limited partnerships in all states.
7. Failure to properly respect formalities and the existence of the LLC.
8. Personal activities may not be insulated by use of an LLC.
9. Failure to address buy-sell provisions or what happens on certain contingencies.
10. Having the tax returns reflect different ownership than the LLC operating agreement and other ownership documents.

THREE EXCEPTIONS TO SPENDTHRIFT CLAUSES

Florida Statute Section 736.0503 codifies three exceptions to otherwise applicable trust creditor protection:

I. Judgments or orders for support or maintenance against a beneficiary by a spouse, child or former spouse. See the Florida Supreme Court Bacardi (yes, the rum company) case – *Bacardi v. White* (463 So. 2d 218 (1985))

II. A judgment creditor of a beneficiary who has provided services for the protection of the beneficiary's interest in the trust.

The above two exceptions are only to apply "as a last resort upon an initial showing that traditional methods of enforcing the claim are insufficient." Fla. Stat. § 736.0503(3) (2007).

III. A claim by Florida or the United States to the extent of a law passed by Florida or the United States that allows penetration of the trust. The authors are not aware of any law that has been passed that would apply here . . . yet.

TRUST-RELATED CREDITOR RIGHTS AND IMPLICATIONS

General Rules.

- As with prior law, Florida Statute Section 736.0505 provides that property of a revocable trust is subject to the claims of the settlor's creditors.
- With respect to an irrevocable trust a creditor of the settlor can reach "the maximum amount that can be distributed to or for the settlor's benefit." Where an irrevocable trust has multiple settlors, "the amount the creditor . . . may reach may not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution."
- An exception to the above applies where the trustee of an irrevocable trust only has discretion to reimburse the settlor (or to directly pay a taxing authority (the Internal Revenue Service) to the extent of any tax on trust income or principal that is payable by the settlor under the grantor trust rules. Fla. Stat. § 736.0505 (2007).

CREDITORS CANNOT ATTACH “ASCERTAINABLE STANDARD” DISTRIBUTION RIGHTS EVEN WHERE THE TRUSTEE IS THE BENEFICIARY

- Whether or not a trust contains a spendthrift provision, under Florida Statute Section 736.0504 the creditor of a beneficiary who has not been considered a contributor to the trust (other than by having withdrawal powers that are not counted as contributions by the beneficiary as described above) will not be able to compel a distribution that is subject to the trustee’s discretion, or even subject to an “ascertainable standard” distribution right (a right in the debtor beneficiary to receive amounts as reasonably needed for health, education and/or maintenance, which under the Internal Revenue Code and applicable regulations would not result in the trust assets being subject to estate tax in the beneficiary’s estate).
- This protection for health, education and maintenance powers applies even if the beneficiary is the sole trustee, so long as the beneficiary trustee’s discretion to make a distribution for his or her benefit is limited by an ascertainable standard.

MANDATORY DISTRIBUTIONS ARE EXPOSED TO CREDITORS

- Under Florida Statute Section 736.0506, once a mandatory distribution should have been made, then a creditor of a beneficiary may reach the distribution to the extent that the distribution has been withheld by the trustee.
- **WHAT ABOUT CRUMMEY POWERS?**
Florida Statute Section 736.0505 provides that a lapsed Crummey power will not be exposed to creditors to the extent that the lapse doesn’t exceed \$14,000 based upon the Internal Revenue Code Section 2503(b) present interest exclusion. But what if there are two Grantors or gift splitting is used? Read literally the Statute may only exclude up to \$14,000 per Crummey power holder, even where a trust is funded using split gifts or dual Grantors. This law will hopefully be clarified in the future.

TRUSTEE'S CREDITORS MAY NOT INVADE A TRUST HELD FOR THIRD PARTIES

- Florida Statute Section 736.0507 codifies the concept that a trustee's interest in trust assets will not be subject to personal obligations of the trustee, even if the trustee becomes insolvent or bankrupt. This, of course, does not apply to the extent that the trustee is the settlor and the beneficiary.
- Under Florida Statute Sections 736.1013 and 736.1015, the trustee of a trust is not personally liable on contracts entered into on behalf of the trust unless the contract so provides or the trustee fails to reveal its fiduciary capacity. Pursuant to Florida Statute Section 736.1013(2), a trustee is personally responsible for torts committed in the course of administration of a trust where the trustee is personally at fault. As provided in Florida Statute Section 736.1015, the trustee has no personal liability for obligations of a general partnership where the general partner interest is held solely in his or her capacity as a trustee, unless the trust is a revocable trust and the trustee is the settlor.

GOOD REASONS TO USE FLORIDA AS THE JURISDICTION OF AN IRREVOCABLE TRUST

1. No income taxes on trust income.
2. No estate, inheritance or gift taxes.
3. A well-developed trust law and experienced probate court judiciary.
4. A 360-year Rule Against Perpetuities.
5. Ability to appoint a Designated Representative.
6. We need the business!

GOOD REASONS NOT TO USE FLORIDA AS THE JURISDICTION OF AN IRREVOCABLE TRUST

1. The power of invasion by a beneficiary's ex-spouse or unintended / undeserving descendants.
2. Trustee's obligation to make extensive disclosures to beneficiaries who the settlor may not want to have annual reminders, plus related expenses.
3. Issues relating to clauses in trusts requiring beneficiaries to have certain religious orientation, sexual orientation, or to be married, which may be viewed as repugnant to Florida public policy but be upheld by a foreign jurisdiction.
4. Creditor access to non-lapsed withdrawal powers, child support, and alimony.
5. Concern as to "court of equity" interpretations.
6. Potential concern that federal legislation could cause domestic trusts to be subject to governmental agency liability, which would not apply to international trusts.

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COMPENSATION OF PERSONAL REPRESENTATIVES, TRUSTEES, AND LAWYERS WHO REPRESENT ESTATES AND TRUSTS

Florida law provides presumed-reasonable compensation percentage of value rates that lawyers and personal representatives can charge in administering a probate estate.

The presumed reasonable legal fees for representing the personal representative in a normal probate are as follows:

- (a) One thousand five hundred dollars for estates having a value \$40,000 or less.
- (b) An additional \$750 for estates having a value of more than \$40,000 and not exceeding \$70,000.
- (c) An additional \$750 for estates having a value of more than \$70,000 and not exceeding \$100,000.
- (d) For estates having a value in excess of \$100,000, at the rate of 3 percent on the next \$900,000.
- (e) At the rate of 2.5 percent for all above \$1 million and not exceeding \$3 million.
- (f) At the rate of 2 percent for all above \$3 million and not exceeding \$5 million.
- (g) At the rate of 1.5 percent for all above \$5 million and not exceeding \$10 million.
- (h) At the rate of 1 percent for all above \$10 million.

In addition to the above, a lawyer can be paid reasonable compensation for "extraordinary services" involving will contests, tax representation, tax advice, and other matters beyond the purview of a straightforward probate administration. The lawyer can also be paid a presumed fair rate based upon one-half of 1% of the value of the estate for preparing the estate tax return for gross estate assets up to \$10,000,000 in value and one-quarter of one percent of the value in excess of \$10,000,000.

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COMPENSATION OF PERSONAL REPRESENTATIVES, TRUSTEES, AND LAWYERS WHO REPRESENT ESTATES AND TRUSTS (CONT.)

A lawyer representing the trustee or trustees of a revocable trust being administered can be paid based upon 75% of the amounts that apply to a probate administration which are described above, and a lawyer representing a decedent who had an estate which poured into a living trust may be able to charge both for the estate administration and for the trust administration, and thus 1.75 times the otherwise intended rate is presumed to be fair compensation when the Statute is read literally.

The personal representative of an estate can also be compensated based upon a percentage basis for normal administrative work and responsibilities based upon the following schedule found in Florida Statute Section 733.617:

- (a) At the rate of 3 percent for the first \$1 million.
- (b) At the rate of 2.5 percent for all above \$1 million and not exceeding \$5 million.
- (c) At the rate of 2 percent for all above \$5 million and not exceeding \$10 million.
- (d) At the rate of 1.5 percent for all above \$10 million.

If there are two personal representatives they can each be paid the above amount, but if there are three or more personal representatives they would share twice the above amount. Many individuals are therefore well-advised to negotiate for an hourly or a fixed fee rate that is less than the statutory rate.

There is no presumed statutory rate to apply for compensation paid to trustees for duties and responsibilities with respect to the administration of trusts, but many lawyers advise trustees to charge 75% of the compensation that would apply to personal representatives under Florida Statute Section 733.617. There is no statute which provides for how much a trustee can be compensated for serving as trustee of a revocable trust, but many lawyers advise their clients that 75% of the amounts that would apply for administration of a will should apply by analogy to the above statutes and the reasoning behind them.

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FINANCIAL EXPLOITATION OF THE ELDERLY: BE KIND TO YOUR GRANDPARENTS

Florida Statute Section 825.103, passed in 2009, makes it illegal to financially exploit the elderly. It states:

“Exploitation of an elderly person or disabled adult” means:

- (a) Knowingly, by deception or intimidation, obtaining or using, or endeavoring to obtain or use, an elderly person's or disabled adult's funds, assets, or property with the intent to temporarily or permanently deprive the elderly person or disabled adult of the use, benefit, or possession of the funds, assets, or property, or to benefit someone other than the elderly person or disabled adult, by a person who:
 - 1. Stands in a position of trust and confidence with the elderly person or disabled adult; or
 - 2. Has a business relationship with the elderly person or disabled adult;
- (b) Obtaining or using, endeavoring to obtain or use, or conspiring with another to obtain or use an elderly person's or disabled adult's funds, assets, or property with the intent to temporarily or permanently deprive the elderly person or disabled adult of the use, benefit, or possession of the funds, assets, or property, or to benefit someone other than the elderly person or disabled adult, by a person who knows or reasonably should know that the elderly person or disabled adult lacks the capacity to consent; or
- (c) Breach of a fiduciary duty to an elderly person or disabled adult by the person's guardian or agent under a power of attorney which results in an unauthorized appropriation, sale, or transfer of property.

The statute makes it a first degree felony if the exploitation involves \$100,000 or more, a second degree felony for between \$20,000 to \$100,000, and a third degree felony for less than \$20,000.

Many sheriff and police departments have special divisions to investigate and assist in the prosecution of individuals who are exploiting the elderly. This is well merited given the propensity of many people to take advantage of persons who cannot defend themselves.

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YOU BET YOUR DIGITAL ASSETS



Stop horsing
around with my
e-mails!

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DIGITAL ASSETS

- New Florida Statute Section 740 was enacted March 10, 2016 and was effective July 1, 2016.
- The new law is known as the Florida Fiduciary Access to Digital Assets Act.
- The Florida Act generally follows the Revised Uniform Fiduciary Access to Digital Assets Act that was drafted by the Uniform Law Commission in 2014.
- One of the most important things to know about this act is that specific “online tool” agreements entered into by a customer and a web based company like Facebook’s Legacy Contact and Google’s Inactive Account Manager will override ownership, disclosure, and possession rights that would otherwise apply under Powers of Attorney, Wills, and Trusts.
- Otherwise, properly drafted Wills, Trusts, and Powers of Attorney will trump standard “terms of service” agreements.

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DIGITAL ASSETS – IMPORTANT DEFINITIONS

- Section 740.002 defines several important new statutory terms:
 - “Digital Asset” is an electronic record in which an individual has a right or interest. The term does not include an underlying asset or liability unless the asset or liability is itself an electronic record.
 - Some examples of digital assets are e-mails, photos, projects, online bank accounts, personal records, digital music, domain names, intellectual property, and client lists.
 - “Account” is an arrangement under a terms of a service agreement in which the custodian carries, maintains, processes, receives, or stores a digital asset of the user or provides goods or services to the user.
 - “Custodian” is a person that carries, maintains, processes, receives, or stores a digital asset of a user.
 - Such as: Facebook, Twitter, Yahoo, or Google.
 - “User” is the person that has an account with a custodian.
 - “Online Tool” is a user contract with variables that allows the user to provide specific directions for disclosure or nondisclosure of digital assets to a third party.
 - Essentially, it is a program designed by a custodian that allows the user to direct how their digital assets will be treated following their death or incapacity.

PRIORITY OF DISCLOSURE OF DIGITAL ASSETS WHEN THERE ARE CONFLICTING INSTRUCTIONS

- For a standard “click-wrap” terms of service agreement, which does not require a separate affirmative act to accept the provisions regarding disposition of digital assets, the priority is as follows:
 1. Online Tool
 2. Estate Planning Documents
 3. Terms of Service Agreement
- If the terms of service agreement requires the user to separately agree to the disposition of digital assets with a separate affirmative act (i.e. another click) then priority is as follows:
 1. Terms of Service Agreement (with specific over-riding instructions)
 2. Online Tool
 3. Estate Planning Documents

SECTION 199A PLANNING

TWO MAIN RULES TO KNOW

(Besides that taxpayers below the threshold can typically take the deduction, most of the time.)

		Situation	Result
1	Specified Service Trade or Business ("SSTB")	A Taxpayer's Taxable Income is under \$315,000 for Taxpayers married filing jointly, or \$157,500 for single filers (\$160,700 and \$321,400 for 2019)	No Limitation applies
		B Taxpayer's Taxable Income is between \$315,000-\$415,000 for Taxpayers married filing jointly or \$157,500-\$207,500 for single filers	Limitation is phased in by the amount Taxable Income exceeds threshold amount Example – MFJ Taxable Income of \$365,000. Deduction is equal to 10% of QBI (50% ((365-315)/100) * 20% Deduction.
		C Taxpayer's Taxable Income Exceeds \$415,000 for Taxpayers married filing jointly or \$207,500 for single filers	No Deduction
2	Wage and Qualified Property Test	A Taxpayer's Taxable Income is under \$315,000 for Taxpayers married filing jointly, or \$157,500 for single filers	No Limitation applies
		B Taxpayer's Taxable Income is between \$315,000-\$415,000 for Taxpayers married filing jointly or \$157,500-\$207,500 for single filers	Limitation is phased in by the amount Taxable Income exceeds threshold amount
		C Taxpayer's Taxable Income Exceeds \$415,000 for Taxpayers married filing jointly or \$207,500 for single filers	Limitation applies unless 50% of Wages or 25% of Wages plus 2.5% of Qualified Property are met at the entity level

WAGES AND QUALIFIED PROPERTY TEST

- Another limitation applies if the taxpayer's taxable income exceeds \$415,000 for married or \$207,500 for single filers, and will be subject to phase outs if income exceeds \$315,000 for married or \$157,500 for single filers. (\$160,700 to \$210,700 for single, and \$321,400 to \$421,400 for married filing jointly, in 2019)
- To the extent that the taxpayer's taxable income exceeds the phase out levels, the Combined Qualified Business Income Amount will be limited to the lesser of:
 - (1) 20% of the taxpayer's qualified business income with respect to the qualified trade or business; or
 - (2) The greater of:
 - A. 50% of the W-2 wages with respect to the qualified trade or business
 - B. **OR** The sum of 25% of the W-2 wages with respect to the qualified trade or business plus 2.5% of the unadjusted basis immediately after the acquisition of all qualified property.
- A \$1,000,000 K-1 would need to be supported by \$400,000 of wages to qualify on the 50% formula. \$400,000 divided by \$1,400,000 is 28.5714%.
- The deduction will then be equal to the lesser of (1) The Combined Qualified Business Income Amount as calculated above; or (2) 20% of taxable income less capital gains.
- Each trade or business must meet the above test. No mixing or matching.

SPECIFIED SERVICE TRADE OR BUSINESS ("SSTB") DEFINED

The deduction will not be available for "specified service businesses" if the taxpayer's taxable income exceeds \$415,000 for MFJ or \$207,500 for single filers, and will be subject to phase outs if income exceeds \$315,000 for MFJ or \$157,000 for single filers.

Specified service businesses include any business where the principal asset is in one of the following:

- | | |
|---|--|
| 1. Health | 7. Consulting |
| 2. Law | 8. Athletics |
| 3. Accounting | 9. Financial Services |
| 4. Actuarial science | 10. Brokerage Services |
| 5. Performing arts | 11. Investing, trading, or dealing in securities, partnership interest, or commodities |
| 6. Reputation or skill of one or more employees | |

It is noteworthy that the above service businesses are defined by reference to IRC Section 1202(e)(3), except unlike Section 1202(e)(3) there is a specific exclusion for engineers and architects. It is unclear, however, if engineers or architects can be brought back in under Section 6 above.

Section 1202 allows taxpayers to exclude up to 100% of the gain on the sale of qualified stock.

(Chart is available by emailing:
agassman@gassmanpa.com)

Activity	Losers	Winners	Waiting to See (still lobbying)
Health	Physicians, pharmacists, nurses, dentists, veterinarians, physical therapists, psychologists, and other similar healthcare professionals who provide medical services in their capacity as a licensed healthcare professionals.	The operation of health clubs or health spas that provide physical exercise or conditioning to their customers, payment processing, or research, testing and manufacture and/or sales of pharmaceuticals or medical devices. Residential facilities for the elderly and surgery centers that do not employ physicians or nurses.	Recreational massage parlors. It is unclear whether stem cell and PRP injection therapy would be an SSTB but it most likely will be classified as an SSTB due to the fact that these services are generally provided by a physician who examines the patient, handles or oversees the extraction and handles or oversees the re-injection, which is often done with ultrasound or other x-ray style guidance.
Law	Lawyers, paralegals, legal arbitrators, mediators, and similar professionals performing services in their capacity as such. Please note that in most states mediators do not need to be licensed lawyers.	The provision of services that do not require skills unique to the field of law, for example, the provision of services in the field of law does not include the provision of services by printers, delivery services, or stenography services.	There is no discussion as to whether trustee and executor and executrix, title insurance and other services that do not require a law license are considered to be legal services.

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Activity	Losers	Winners	Waiting to See (still lobbying)
Accounting	Accountants, enrolled agents, return preparers, financial auditors, and similar professionals. Tax return and bookkeeping services. Title Agents are considered to be performing services in accounting. Accounting is not limited to services requiring state licensure or the same education as a certified public accountant (CPA).	Payment processing and billing analysis.	
Actuarial Science	Is based on the ordinary meaning of "actuarial science" and provides that the term "performance of services in the field of actuarial science" means the provision of services by actuaries and similar professionals in their capacity as such.	The provision of services by analysts, economists, mathematicians, and statisticians not engaged in analyzing or assessing the financial costs of risk or uncertainty of events.	

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Activity	Losers	Winners	Waiting to See (still lobbying)
Performing Arts	The performance of services by individuals who participate in the creation of performing arts, such as actors, singers, musicians, entertainers, directors, and similar professionals.	Broadcasters or individuals that disseminate video or audio of performing arts. Maintenance and operation of equipment or facilities used in the performing arts. Writers whose work is not integral to the creation of performing arts such as a song or a screenplay.	
Consulting	The provision of professional advice and counsel to clients to assist the client in achieving goals and solving problems. Including lobbyists and other similar professionals.	Does not include consulting services embedded in, or ancillary to, the sale of goods or performance of services on behalf of a trade or business (e.g., services provided by a building contractor) if there is no separate payment for the consulting services. Architects and Engineers.	

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Activity	Losers	Winners	Waiting to See (still lobbying)
Athletics	Individuals who participate in athletic competition such as athletes, coaches, and team managers in sports such as baseball, basketball, football, soccer, hockey, martial arts, boxing, bowling, tennis, golf, skiing, snowboarding, track and field, billiards, and racing. Owners of sports teams.	Broadcasters or individuals that disseminate video or audio of athletics. Maintenance and operation of equipment or facilities used in athletics. Concession stands at athletic events.	
Financial Services	Limits the definition of financial services to services typically performed by financial advisors and investment bankers. Including managing wealth, advising clients with respect to finances, developing retirement and wealth transition plans, the provision of advisory and other similar services regarding valuations, mergers, acquisitions, dispositions, restructurings, and raising financial capital by underwriting, and other similar services.	Banks (i.e. taking deposits or making loans). Interest earned on notes owed by customers or on notes receivable resulting from the financed sale of products to customers. Life insurance sales activities.	Real Estate Appraisers, Art Appraisers, & Business Appraisers for Gift and Estate Tax Purposes

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(Chart is available by emailing:
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Activity	Losers	Winners	Waiting to See (still lobbying)
Brokerage Services	<p>A person that arranges transactions between a buyer and a seller with respect to securities for a commission or fee.</p> <p>This includes services provided by stock brokers and other similar professionals.</p>	<p>Real estate agents and brokers, Ticket brokers, art brokers, car/boat brokers.</p> <p>Insurance agents and brokers.</p>	
Investment Management	<p>A trade or business involving the receipt of fees for providing investing, asset management, or investment management services, including providing advice with respect to buying and selling investments.</p>	<p>Managers of real property, including management through agents, employees and independent contractors.</p>	

(Chart is available by emailing:
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Activity	Losers	Winners	Waiting to See (still lobbying)
Trading Services	<p>A trade or business of trading in securities, commodities, or partnership interests, regardless of whether that person trades for the person's own account, for the account of others, or any combination thereof.</p>	<p>Hedging transactions as part of normal business operations.</p>	
Dealing in Securities	<p>Regularly purchasing securities from and selling securities to customers in the ordinary course of a trade or business or regularly offering to enter into, assume, offset, assign, or otherwise terminate positions in securities with customers in the ordinary course of a trade or business. Taxpayers who engage in no more than a negligible amount of sales of loans is no longer exempt from being deemed to be dealing in securities, which was the case under the Proposed Regulations.</p>	<p>A taxpayer who performs services to originate loans.</p>	

(Chart is available by emailing:

Activity	Losers	Winners	Waiting to See (still lobbying)
Dealing in Commodities	Regularly purchasing commodities from and selling commodities to customers in the ordinary course of a trade or business or regularly offering to enter into, assume, offset, assign, or otherwise terminate positions in commodities with customers in the ordinary course of a trade or business.	Hedging transactions as part of normal business operations.	
Where the Principal Asset of the Trade or Business is the Reputation or Skill of One or More Employees of Owners	Any individual that receives the following: (A) Fees or other compensation is received for endorsement of products or services; (B) License or fees are received for the use of an individual's image, likeness, name, signature, voice, trademark, or any other symbols associated therewith; or (C) Compensation is received for appearing at an event or on radio, television, or other media. For the purposes of the above, compensation includes ownership in a business entity that is received in lieu of cash.	Any skilled individual or owner that does not receive income from one of the categories on the left. Engineers, architects, chefs, and other skill based services. (i.e. Jimmy Buffet and Margaritaville, Bobby Flay, Wolfgang Puck, Gordon Ramsey, etc.)	
In the Trade or Business of Being an Employee	Individual who was formerly treated as an employee for federal income tax purposes, and who is subsequently characterized as an independent contractor and provides services for the same individual or entity, will be presumed to be "in the trade or business of performing services as an employee" for 3 years following termination of employee status. This status can be rebutted by showing that the taxpayer is in fact an independent contractor.	Individuals that were not former employees. Former employees who can demonstrate that relationship has been materially modified. Individuals whose status as an employee terminated more than three years ago.	

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When a Related Trade or Business Becomes a Pseudo SSTB

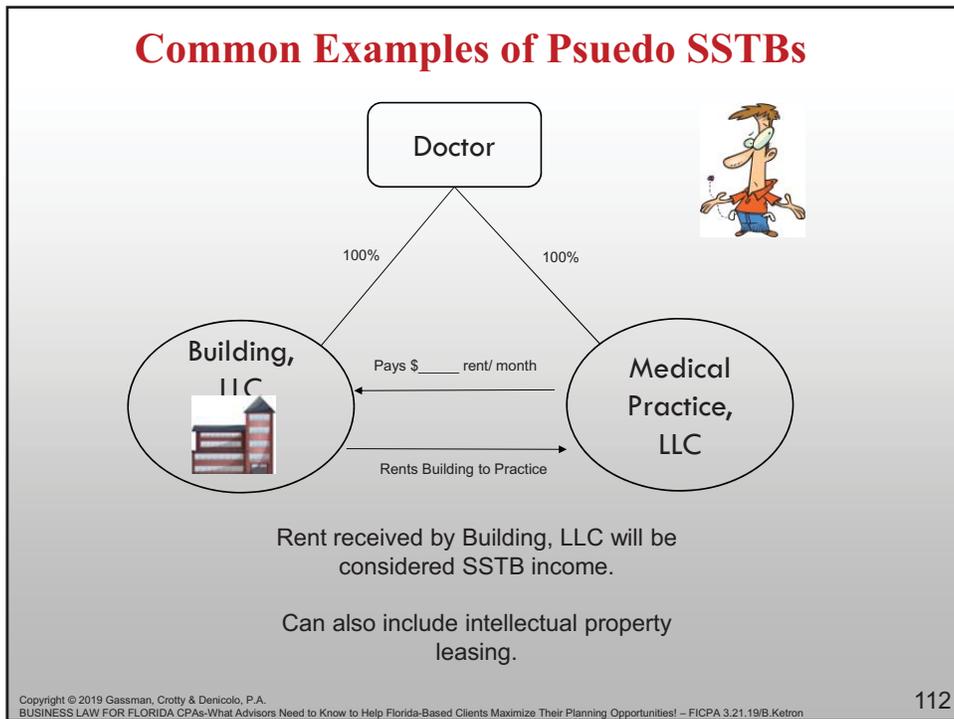
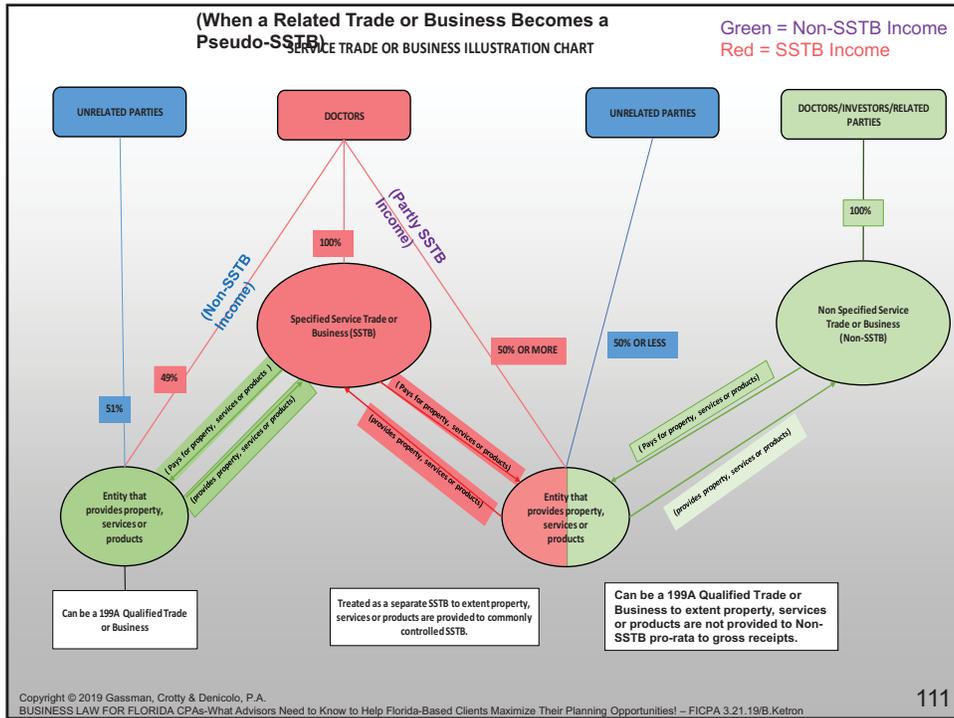
The Proposed Regulations had provided special rules for when a trade or business has 50% or more common ownership with an SSTB, and provides property or services to the commonly owned SSTB.

The Proposed Regulations provided that a trade or business that provided more than 80% of its property or services to an SSTB and had at least 50% common related party ownership would be treated as an SSTB. When there was at least 50% common ownership and less than 80% of the property or services were provided to the related party SSTB then the related entity would be considered to be an SSTB in proportion to the products and services provided to the SSTB.

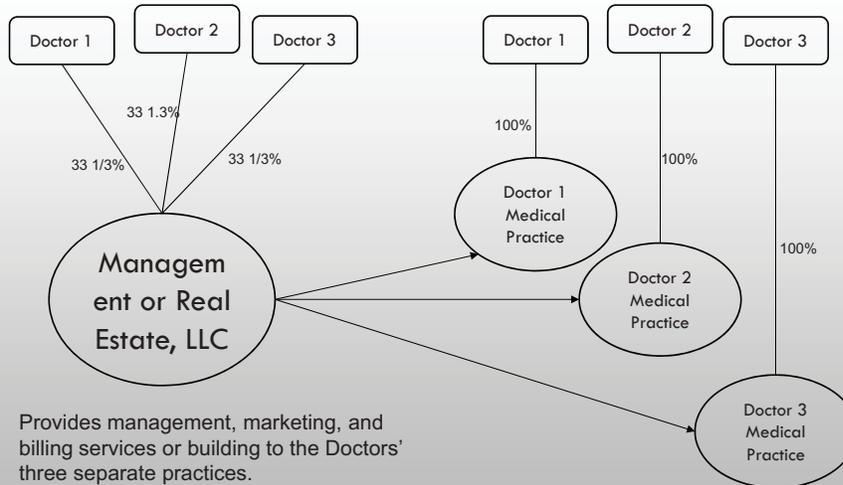
The Final Regulations eliminate the 80% rule, and simply provide that if there is more than 50% or more common ownership, the portion of the trade or business providing property or services to the 50% or more commonly owned SSTB, will be treated as a separate SSTB, with the income attributable to the services provided to non-SSTBs being considered to be non-SSTB income.

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Non-SSTB Company



Provides management, marketing, and billing services or building to the Doctors' three separate practices.

Can be a 199A Qualified Trade or Business.

Aggregation of SSTB & Non-SSTB Income Under Final Regulations

1. Small amount of specified service trade or business income will not taint a non-specified service trade or business.

The Final Regulations retained the *de minimis* exception that applies when income from a Specified Service Trade or Business is less than 10% of gross receipts, if the entity has \$25,000,000 or less of annual receipts or 5% of gross receipts if annual receipts are greater than \$25,000,000.

For example, a consultant could join an engineering firm with less than \$25,000,000 in annual receipts, and qualify non-employment income for the exemption, if the consulting revenue is less than 10% of total revenue. A 5% threshold will apply if the engineering firm has more than \$25,000,000 a year of revenues.

2. Incidental Trade or Business under common ownership with a SSTB removed from Final Regulations.

Under the Proposed Regulations, if a trade or business shares wage and overhead expenses with a SSTB and is more than 50% commonly owned by the owners of the SSTB, then such trade or business will be treated as incidental to and thus a part of the SSTB unless the gross receipts from the traded or business exceeds 5% of the combined gross receipts of the SSTB and the incidental trade or business.

The Proposed Regulations provided the example of a dermatologist selling skin care products at the dermatology office. The sales from the skin care products would not be considered to be separate from the dermatology practice unless the gross receipts from the sale of skin care products exceed 5% of the combined gross receipts from the sale of the skin care products and the dermatology practice.

This was removed from the Final Regulations and presumably any incidental non-SSTB trade or business will be eligible for the Section 199A deduction regardless of gross receipts.

De Minimis Rule Examples in Final Regulations

(Note: We have underlined important language.)

Example One - Landscape LLC sells lawn care and landscaping equipment and also provides advice and counsel on landscape design for large office parks and residential buildings. The landscape design services include advice on the selection and placement of trees, shrubs, and flowers and are considered to be the performance of services in the field of consulting under paragraphs (b)(1)(vi) and (b)(2)(vii) of this section. Landscape LLC separately invoices for its landscape design services and does not sell the trees, shrubs, or flowers it recommends for use in the landscape design. Landscape LLC maintains one set of books and records and treats the equipment sales and design services as a single trade or business for purposes of sections 162 and 199A. Landscape LLC has gross receipts of \$2 million.

\$250,000 of the gross receipts is attributable to the landscape design services, an SSTB. Because the gross receipts from the consulting services exceed 10 percent of Landscape LLC's total gross receipts, the entirety of Landscape LLC's trade or business is considered an SSTB.

Example Two - Animal Care LLC provides veterinarian services performed by licensed staff and also develops and sells its own line of organic dog food at its veterinarian clinic and online. The veterinarian services are considered to be the performance of services in the field of health under paragraphs (b)(1)(i) and (b)(2)(ii) of this section. Animal Care LLC separately invoices for its veterinarian services and the sale of its organic dog food. Animal Care LLC maintains separate books and records for its veterinarian clinic and its development and sale of its dog food. Animal Care LLC also has separate employees who are unaffiliated with the veterinary clinic and who only work on the formulation, marketing, sales, and distribution of the organic dog food products. Animal Care LLC treats its veterinary practice and the dog food development and sales as separate trades or businesses for purposes of section 162 and 199A. Animal Care LLC has gross receipts of \$3,000,000. \$1,000,000 of the gross receipts is attributable to the veterinarian services, an SSTB. Although the gross receipts from the services in the field of health exceed 10 percent of Animal Care LLC's total gross receipts, the dog food development and sales business is not considered an SSTB due to the fact that the veterinary practice and the dog food development and sales are separate trades or businesses under section 162.

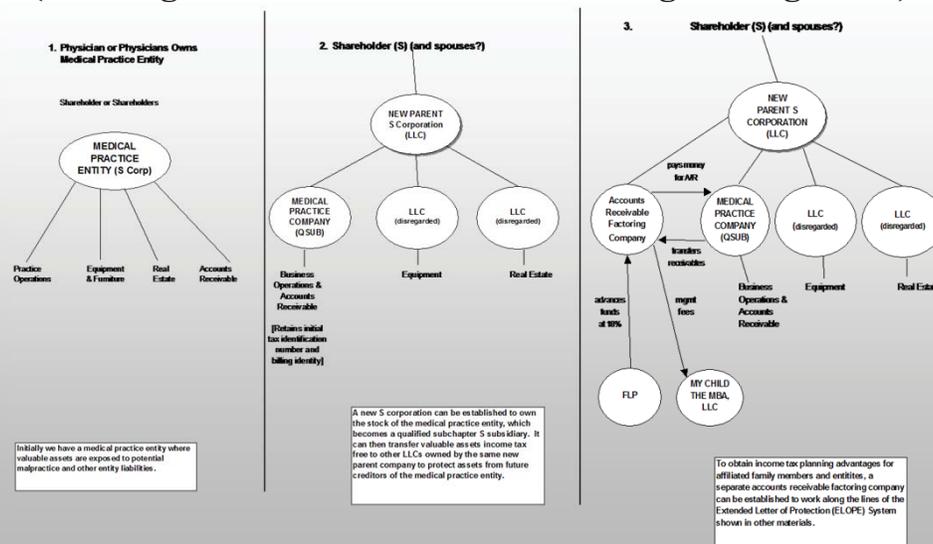
When Separate Books and Records Should Be Maintained When SSTB and Non-SSTB Activities are Under One Entity

Type of Business	Percentage of SSTB Gross Receipts When Divided by Total Gross Receipts	Are Separate Books and Records Maintained?	Tax Treatment
Mainly Non-SSTB <i>De Minimis Rule</i>	Under 10% with gross receipts under \$25 million or under 5% with gross receipts over \$25 million.	Does not affect treatment.	All income is treated as non-SSTB.
Mainly Non-SSTB	Under 10% with gross receipts under \$25 million or under 5% with gross receipts over \$25 million.	No	All income is treated as SSTB income.
Mainly Non-SSTB	Under 10% with gross receipts under \$25 million or under 5% with gross receipts over \$25 million	Yes	The taxpayer is treated as an SSTB but may treat non-SSTB income as non-SSTB because "separable" books and records are kept.
Mainly SSTB	Does not affect treatment.	Yes	All non-SSTB income is treated as non-SSTB income.
Mainly SSTB	Does not affect treatment.	No	All income is treated as SSTB income.

Best Ways to Separate Non-SSTB and SSTB Income

1. Maintain separate books and records.
2. Have separate employees in non-SSTB activity that are unaffiliated with SSTB.
3. Create a subsidiary for SSTB activity and a subsidiary for Non-SSTB activity.
4. Separate Non-SSTB into different taxable entity.

New Parent F Reorganization (Showing Accounts Receivable Factoring Arrangement)



Section 199A Strategies

Let's talk now about strategies as opposed to the 199 technical points that we could spend the rest of our time reviewing.

These strategies may not mean a lot as I review, but these are the "take it back to the office and apply it" items that can save solid tax dollars for your clients, and give you a useful checklist for what your law firm or CPA firm can do to help clients qualify for the strategy.

Taking into account that single taxpayers with under \$157,500 in taxable income and married under \$315,000 can take the deduction for any specified trade or business, and without reference to whether wages or qualified property levels apply:

a. **Don't Use S Corporations for Low Income Taxpayers.**

Do not use an S-Corporation for these clients, unless you have to have wages to justify a pension plan or can put part ownership under someone other than the taxpayer or the taxpayer's spouse that files a joint return with the taxpayer.

If there is no significant pension plan, and a married contractor can earn \$315,000, as a Schedule C taxpayer, do so without going into an S-Corporation, so that she does not have to pay herself reasonable wages under Revenue Ruling 74-44 and the long line of case law requiring S-Corporation shareholders to pay themselves reasonable compensation if rules because the wages do not qualify for the Section 199A deduction.

Section 199A Strategies, continued

b. **Use S Corporations for High Income Taxpayers.**

If your client is well over the \$217,500, or \$415,000 if married, threshold, then the business is probably best suited to be an S-Corporation, to avoid employment taxes and to enable the person to pay himself or herself sufficient wages to qualify.

c. **Minimize or Eliminate Guaranteed Payments From Partnerships.**

Your clients who derive income from entities taxed as partnerships should minimize guaranteed payments that they receive, because this income does not qualify for the Section 199A deduction.

If your client is receiving a guaranteed payment that needs to be wages, then convey the partnership interest to the S-Corporation if debt does not exceed basis, and the compensation paid to the individual owner of the S-Corporation does not have to be classified as a guaranteed payment.

Remember that hot assets (ordinary income assets) from the sale of a partnership interest qualify for the 199A deduction.

d. **Asset Sales Yielding Ordinary Income Can Qualify Under Section 199A.**

The Proposed Regulations specifically confirm this for situations where a partner's sale of a partnership interest triggers "hot asset" income (from accounts receivable and appreciable items).

This should also apply where there is a sale of assets and ordinary income from the sale of accounts receivable, and depreciation recapture. Section 1231 business property that qualifies for capital gains will not qualify for the 199A deduction.

When accounts receivable and depreciable assets are sold, the ordinary income attributable thereto may be taxed at 80% of the otherwise applicable rate because of Section 199A. Depreciation recapture may therefore be at 80% of 25% for business real estate-which is 20%.

Section 199A Strategies, continued

e. **Reduce Income.**

Do whatever you can to get the individual or married couple income below the \$315,000/
\$157,500 levels if this will save considerable taxes:

1. Defined benefit or cash balance pension planning.
2. 199A asset acquisitions.
3. Shelter capital gains in Charitable Remainder Uni-Trusts or by using deferred exchanges under 1031, which now only applies to investment or business real estate.
4. Oil and gas investments (100% deduction for individual's intangible drilling costs ("IDC")).
5. Conservation easements.
6. Put other family members to work and on the payroll to reduce taxpayer's income and increase wages.
7. Pay past due and prior earned amounts to others in 2018.
8. Defer sale of capital gain asset to next year if sale will increase income above the threshold levels.

Section 199A Strategies, continued

f. **Establish Arm's-Length Compensation and Sales Arrangements.**

A specified trade or business owned by a high-earner taxpayer may pay arms length management, marketing, billing and factoring fees to a separate company whose income will not be Specified Trade or Service Business income until the final regulations come out.

When the final regulations come out, the separate company can be owned by children and/or 678 Trusts which are considered as owned by the beneficiary who had to withdrawal right over all assets. Google Gassman Forbes 678 to see article on this.

The ownership can be under complex trusts, which should receive a \$157,500 threshold at both the trust level and at the level of each beneficiary until the final regulations come out.

If the final regulations restrict use of complex trusts convert the complex trust into a 678 trust, so for each young child, you will have \$157,500 times 7% savings.

g. **Plan for Wages.**

Remember that the wages need to be 28.57% of what the income without wages would otherwise be, and include not only wages themselves, but also pension contributions and employer paid health benefits.

You may, therefore, already have significant "wages" but may not know it.

Section 199A Strategies, continued

- h. Decide **what income to aggregate** between related companies and what you can do to prevent aggregation in later years. Remember you can't aggregate SSTBs.
- i. **Separate life insurance agency** income from investment advisory and annuity sales income.
- j. **Restructure celebrities and well known professionals** so that their earnings come from business operations and not from royalties or endorsements.
- k. Make **real estate rentals and other "passive" activities** active in order to qualify such activities for the Section 199A deduction.
- l. **Pay off loans** to eliminate interest expenses to qualify for a larger deduction, or maintain debt if interest expense will reduce income below the high earner thresholds.
- m. Remember that **1231 property income** – capital gains income from the sale of business property – will not qualify, but losses will reduce 199A income. (See Section 1231 Summary Chart on next slide.)

The Section 1239 rules also apply.

Section 199A Strategies, continued

- n. Check **Alternative Minimum Tax**, although the Section 199A deduction is not a preference item for AMT tax purposes.

Item Included in Taxable Income	Included in Alternative Minimum Taxable Income?
Standard Deduction	Not Allowed
State and Local Taxes	Not Allowed
Depreciation Deductions	Allowed (Some Restrictions Apply/Subject to Different calculation Method)
Itemized Medical Expenses	Allowed (To the extent exceeding 10% of Adjusted Gross Income)
Intangible Drilling Costs	Allowed (Some Restrictions Apply)*
Gain/Loss From Sale or Exchange of Property	Allowed
Section 199A Deduction	Allowed
Mortgage Interest Payment Deduction	Allowed (Except upon home equity loans)
Net Operating Losses	Allowed (but may not exceed 90% of AMTI)

Section 199A Strategies, continued

- o. Have **marijuana-related businesses** in flow through entities that have plenty of wages or qualified property to receive the 20% deduction.

Chart 11 – SECTION 280E EFFECT CHART. This chart displays the effect of Section 280E on business deductions.

Deductible:			
✓ YES		Revenue	\$1,000,000.00
		Costs of Goods Sold (COGS)	\$900,000.00
		Gross Income	\$100,000.00
✗ NO	280E Applies!	Expenses (any amount paid or incurred during the taxable year)	\$50,000.00
		Net Income	\$50,000.00
✓ YES		Other Deductions (Ex: 199A)	\$22,000.00
		Taxpayer's Taxable Income	\$28,000.00

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Section 199A Strategies, continued

- P. **Get Married or Divorced**, depending upon the circumstances.
 1. Marry someone with large net operating losses to reduce income when filing jointly as married to meet \$315,000 threshold.
 2. Marry someone who can receive wages from a Schedule C business owned by their new spouse to reduce the threshold of the wage paying spouse if filing separate.
 3. Get divorced and have your ex-spouse own 51% of the management company, especially if he or she likes to manage.
 4. Other considerations are shown on the chart on the next three slides:



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Section 199A Strategies, continued

Chart 17 – MARITAL CONSIDERATIONS CHART.

Consideration	Single Status	Married Status
Sale of a primary residence (Section 121(b))	Capital gain is excluded up to \$250,000	Capital gain is excluded up to \$500,000
Federal estate tax exemption	Can only shield assets up to \$11.2 million from estate, gift, and generation-skipping tax	Can shield assets up to \$22.4 million from estate, gift, and generation-skipping tax
Marital Tax Penalty and Bonuses	High-earning individuals may be better separate from a financial standpoint	Two high-earning individuals who get married may be subject to an increase in tax; one high-earner and one low-earner getting hitched may create tax savings
Medicare surtax threshold (additional 0.9% tax above the threshold)	\$200,000 per person threshold	\$250,000 per married couple threshold (a \$150,000 threshold loss)
Tax on Social Security benefits	Can earn up to \$25,000 and not be taxed on Social Security benefits	Can earn up to \$32,000 and not be taxed on Social Security benefits
Transferability of assets upon death	Subject to estate tax if decedent is over \$11,180,000 exemption amount on death	Surviving spouse can receive assets tax-free upon the death of the first spouse
Social Security survivorship benefits	Unmarried children under 18 can receive benefits;	Spouses can receive partial benefits if they are under

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Chart 17, Marital Considerations Chart, continued

Consideration	Single Status	Married Status
	possibly parents where the deceased provided at least half of their parent's support	retirement age, and may be eligible for 100% of the deceased's benefit if they have reached retirement age
Government and Employer Pension Plan survivorship benefits	No surviving spouse benefits if not married	Potentially eligible for survivorship benefits
Transferability of assets upon divorce	N/A	Tax-free passing of assets upon divorce
Ability to roll over an IRA on the death of a spouse	Cannot treat it as one's own IRA; cannot make continued contributions to the IRA	Allowed to roll over the IRA upon death without a tax hit; can treat the IRA as the surviving spouse's own; can continue to make contributions to the IRA
Net operating losses (NOL)	Cannot transfer to others	If losses are accumulated during marriage, they can be used against the joint income of the couple. If they are accumulated while single, it may be possible for one spouse to hire the NOL spouse and pay them a wage, which would be deductible depending on how large the NOLs are
Related Party Losses (Section 167(e))	Can take the losses on the sale to another individual	Can take the losses on the sale to his spouse
Medical and Nursing Expenses (to the extent they exceed 10% of Adjusted Gross Income)	May not be able to be claimed because of too high income (where the expenses fall under 10% of adjusted	Large medical expenses are more likely to impact the marital income, and may save thousands in taxes ²¹²

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Chart 17, Marital Considerations Chart, continued

Consideration	Single Status	Married Status
	gross income) or too low, where much of a potential deduction is wasted	
Sharing Capital Loss Carryforward (the excess of \$3,000 is carried forward into future years)	N/A	An unmarried individual with loss carryforward from capital losses can marry someone with capital gains, and use the loss carryforward to reduce their capital gains liability
Tax Brackets	Enters the highest bracket of 37% at \$500,000 of taxable income	Enters the highest bracket of 37% at \$600,000 of taxable income
Standard deduction	Able to claim a \$12,000 standard deduction	Able to claim a \$24,000 standard deduction or two \$12,000 standard deductions if filing separately

Section 199A Strategies, continued

q. **Warn about Substantial Understatement Test** – a single dollar of Section 199A eligible deduction causes the substantial understatement test to go from the greater of \$5,000 or 10% of the tax required to be shown, to 5% of the tax, for no apparent reason.

r. **If W-2 Wages and UBIA of Qualified Property is not reported, then the taxpayer's share of such items will be presume to be zero!**

The Final Regulations clarified that if one item is not reported then it will not result in other items being presumed to be zero.

The Final Regulations also added a provision that would allow unreported items to be reported on an amended or late filed return for any open tax year.

s. **Reconsider Entity Selection**, based on Section 199A Factors.

(See chart on next slide.)



Issue/Factor	Sole Proprietorship	Partnership	S Corporation	C Corporation
Tax Rates	Owners are taxed at individual rates for salary and income of the company	Owners are taxed at individual rates for salary and income of the company	Owners are taxed at individual rates for salary and income of the company	Entity taxed for income at 21%; shareholders taxed for dividends and distributions
Double Taxation	Not subject	Not subject	Not subject	Dividends or distributions taxed separately
Issue/Factor	Sole Proprietorship	Partnership	S Corporation	C Corporation
Availability of Section 199A deduction	Available (depending on limitations)	Available (depending on limitations)	Available (depending on limitations)	Cannot qualify for Section 199A
Accumulated Earnings	Taxed to owner as reported on their Form K-1, regardless of whether distributions are made	Taxed to owner as reported on their Form K-1, regardless of whether distributions are made	Taxed to owner as reported on their Form K-1, regardless of whether distributions are made	Taxed at 21% corporate rate; beware of accumulated earning tax issues
Guaranteed payments	N/A	Excluded from QBI; Not considered to be W-2 wages	N/A	N/A
Owner provides services (reasonable compensation issues)	Self-Employed (no W-2 wages); currently not subject to reasonable compensation	Self-Employed (no W-2 wages); currently not subject to reasonable compensation rules	W-2 Wages; excluded from QBI and subject to reasonable compensation rules	W-2 Wages; subject to reasonable compensation rules
Business is a Specified Service Trade or Business	Eligible if owner's taxable income is under lower-income thresholds; Limited if in between lower- and higher-income thresholds; Lost if taxable income is greater than higher-income thresholds	Eligible if owner's taxable income is under lower-income thresholds; Limited if in between lower- and higher-income thresholds; Lost if taxable income is greater than higher-income thresholds	Eligible if owner's taxable income is under lower-income thresholds; Limited if in between lower- and higher-income thresholds; Lost if taxable income is greater than higher-income thresholds	N/A
High Income earner as owner	May be limited if Wage/Property Hurdle is not met	May be limited if Wage/Property Hurdle is not met	May be limited if Wage/Property Hurdle is not met	N/A
Employees (W-2 Wages)	Consider impact on Wage/Property Limitation, adjust if necessary	Consider impact on Wage/Property Limitation, adjust if necessary	Consider impact on Wage/Property Limitation, adjust if necessary	N/A
Issue/Factor	Sole Proprietorship	Partnership	S Corporation	C Corporation
Independent contractors	Hurts in application of Wage/Property Hurdle; Compensation not considered W-2 wages	Hurts in application of Wage/Property Hurdle; Compensation not considered W-2 wages	Hurts in application of Wage/Property Hurdle; Compensation not considered W-2 wages	N/A
Qualified property basis	Consider impact on Wage/Property Hurdle, adjust if necessary	Consider impact on Wage/Property Hurdle, adjust if necessary	Consider impact on Wage/Property Hurdle, adjust if necessary	N/A
State and local tax deductions	Deduction Limited	Deduction Limited	Deduction Limited	Fully Deductible
Medical expenses and plans deductions	N/A	N/A	N/A	Premiums and medical reimbursement plans are deductible

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ITEMS RELATING TO BUSINESS

C CORPORATIONS

Corporate tax rates were reduced from 35% to 21%, and the alternative minimum tax for corporations was eliminated. This change is permanent.

Taxable Income	2017 Rate	2017 Tax Liability	2018 Rate	2018 Tax Liability	Savings
\$25,000	15%	\$3,750	21%	\$5,250	(\$1,500)
\$50,000	15%	\$7,500	21%	\$10,500	(\$3,000)
\$75,000	25%	\$13,750	21%	\$15,750	(\$2,000)
\$100,000	34%	\$22,250	21%	\$21,000	\$1,250
\$335,000	39%	\$113,900	21%	\$70,350	\$43,550
\$10,000,000	34%	\$3,400,000	21%	\$2,100,000	\$1,300,000
\$15,000,000	35%	\$5,150,000	21%	\$3,150,000	\$2,000,000
\$20,000,000	35%	\$7,000,000	21%	\$4,200,000	\$2,800,000

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FLOW THROUGH INCOME PLANNING CONSIDERATIONS

SECTION 1202

A taxpayer may exclude up to 100% of the gain from the sale of a “Qualified Small Business” under Section 1202, if the following requirements are met:

1. Must be stock of a C-Corporation acquired after 1993.
2. Stock must have been acquired at original issue in exchange for money or other property, or as compensation for services performed for the corporation.
3. The Corporation must be a “qualified small business” immediately before and immediately after the issuance of stock. (i.e. Cash and basis of property held by the corporation does not exceed \$50,000,000)
4. During substantially all of the taxpayer’s holding period, the Corporation meets the active trade or business requirements of § 1202(e).
5. The qualifying stock must be held for more than five years.

Section 1202 – Active Trade or Business Requirement

80% of the assets of the corporation must be used in the active conduct of one or more “qualified trades or businesses”. A qualified trade or business is defined by exclusion and means any business other than the following:

Specified Service Business Under Section 1202 (which also arise under Section 199A)

- Health
- Law
- Accounting
- Actuarial Science
- Performing Arts
- Consulting
- Athletics
- Financial Services
- Brokerage Services
- Investing Trading, or dealing in securities, commodities etc.
- Principal asset is reputation or skill of one or more employees.

Businesses Limited Under Section 1202, but Not Limited Under Section 199A

- Engineering
- Architecture
- Any banking, insurance, financing, leasing, investing, or similar business.
- Any farming business (including the business of raising and harvesting trees).
- Any business involving the production or extraction of products of a character with respect to which a deduction is allowable under section 613 or 613A (i.e. oil, gas, and mining businesses).
- Any business of operating a hotel, motel, restaurant, or similar business.

Section 1202 – Active Trade or Business Requirement

In determining whether 80% of the assets are used in the active conduct of a qualified trade or business, any assets (including cash) held as part of the reasonably required working capital needs of the business are treated as used in the active conduct of such business.

Once a corporation has been in existence for more than two years, no more than 50% of the total assets of the corporation can qualify as used in the active conduct of a qualified trade or business by reason of being held as working capital.

A corporation will not satisfy the active trade or business requirement if more than 10% of the corporation's total assets (in excess of its liabilities) are stock or securities in other corporations which are not subsidiaries of such corporation, or held as part of the reasonably required working capital of the corporation.

A corporation will also fail the active trade or business requirement if it holds more than 10% of the total value of its assets in real property which is not used in the active conduct of a qualified trade or business.

Flow Through Income Planning Considerations

SECTION 1202 – AMOUNT OF ELIGIBLE GAIN THAT CAN BE EXCLUDED

The amount of gain excluded cannot exceed the greater of:

1. \$10,000,000
2. Ten times the taxpayer's basis in the stock.

Self-Employment Tax Developments AKA Watch Out for Entities Taxed as Partnerships That Are Not State Law Limited Partnerships

While it is clear that S-corporation distributions will not be subject to employment or the Medicare tax, unless re-characterized as compensation, the tax law is not so clear when an entity is involved that is taxed as a partnership but is not organized as a limited partnership.

The 1997 proposed regulations, which were never finalized, are still in effect and should allow for no employment or Medicare tax to apply if all three of the following requirements are met:

1. The member / partner does not have personal liability for the debts of the entity under state law (e.g. a limited partner – not a general partner).
2. The individual cannot have authority to contract on behalf of the entity under the law of the state where the entity is organized. This will almost always be the case.
3. The individual cannot participate in the entity's trade or business for more than 500 hours during the taxable year.

If any of the above three tests are failed, then a back up test for immunity from employment taxes and the Medicare tax will apply if the following two elements are satisfied:

1. Other owners in the entity have a substantial continuing interest as "limited partners" or LLC members. Many believe that 20% will be considered to be substantial.
2. The rights and obligations between the member / partner in question and the other substantial owners are identical, on a pro rata basis.

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Self-Employment Tax Developments

In Chief Counsel Advice 2016-40014, the IRS found that members of an LLC taxed as a partnership who were not active in its business would not be subject to self-employment taxes, while the member who was active would be subject to such taxes. The member who was active in the business argued that some portion of the member's income was attributable to investment, and not services rendered, but the Chief Counsel held that an active investor / member of an LLC taxed as a partnership will be subject to employment taxes on all partnership income.

In the 2015 case of *Methvin* (Tax Court Memorandum 2015-81), an individual taxpayer invested in an oil and gas interest that was required to be held individually in order to receive the IDC deduction (Intangible Drilling Cost are typically deductible 100% when spent, and need not be depreciated if the investor is an individual). The terms of the investment required the individual to be completely passive, but the Tax Court concluded that the income was subject to self-employment tax because the individual was not a "limited partner" or the equivalent thereto.

In the 2017 Tax Court case of *Hardy* (Tax Court Memorandum 2017-16), Dr. Hardy and seven (7) other doctors owned a surgery center LLC taxed as a partnership, which was separate and apart from their medical practices. The manager of the surgery center met with the doctors every calendar quarter, and the Court concluded that Dr. Hardy had no day-to-day responsibilities at the center and had no active input into the management decisions made related to running the surgery center. The Tax Court concluded that Dr. Hardy did not run the business and that his income would not be subject to employment taxes.

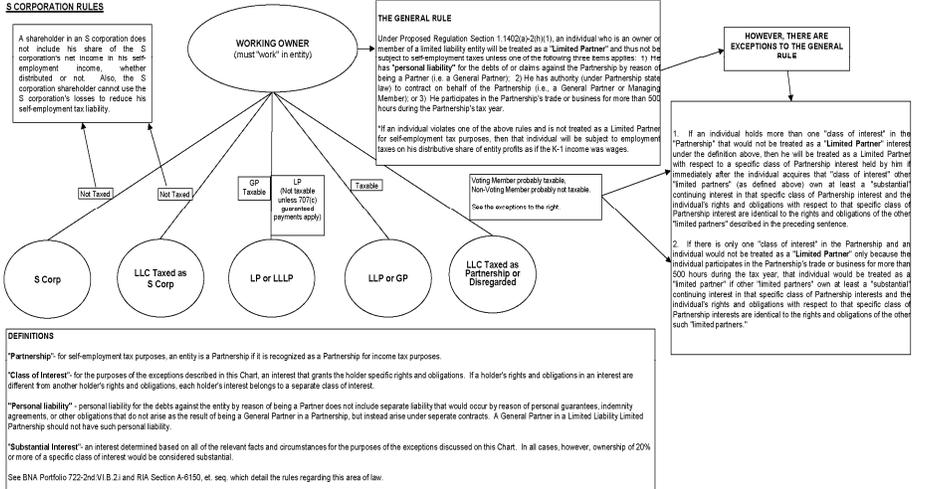
In *Castiglio* (Tax Court Memorandum 2017-62), three (3) lawyers in a law firm that was structured as a member-managed LLC and taxed as a partnership were the only owners of the LLC and managed the LLC. The members paid themselves compensation from the LLC which they reported as guaranteed payments. The members tried to claim that the other distributions they received from the LLC should not be subject to self-employment tax. The Court noted that the three owners were actively involved in running the LLC, and the Court held that all of their income would be subject to employment taxes.

In the case of *Fleischer* (Tax Court Memorandum 2016-238), an insurance salesman and financial advisor operated under an S-corporation, but most, if not all, of his actual commission agreements were in his individual name. He characterized a large part of his income as being dividends from the S-corporation, but the Tax Court held that because the contracts were not in the name of the S-corporation, his income associated therewith was subject to self-employment tax, as if he was a proprietor.

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Self-Employment Tax Developments

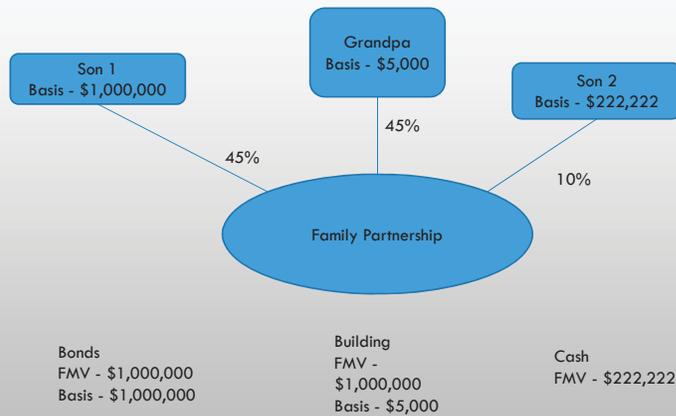


Net Investment Income (Medicare 1411)/ Self-Employment Tax Planning

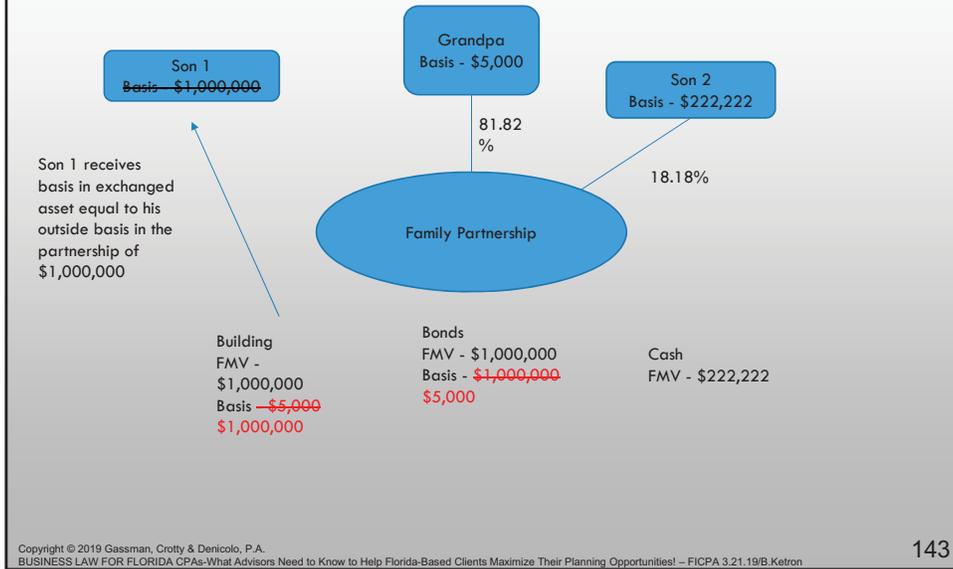
<p>Medicare Tax – 3.8% - Imposed upon most kinds of “passive income” for taxpayers above the \$200,000/\$250,000 single/married net income and \$12,500 Trust income</p>	<p>Self-Employment Taxes 15.3% on first \$128,400, 2.9% up to \$200,000/\$250,000, and 3.8% thereafter – Imposed upon actively procured income – by a pseudo employee or independent contractor</p>
<p>Most well-known aspects</p>	<p>Most well-known aspects</p>
<p>1. Not imposed on S corporation dividends</p>	<p>1. Does not apply to legitimate S corporation dividend income</p>
<p>2. Not imposed where taxpayer is “active” in a pass through business entity (500 hours test and six others)</p>	<p>2. Does not apply to real estate rental or sale income unless you are a “real estate professional”</p>
<p>3. Not imposed upon real estate rental activity income</p>	<p>3. Applies to Independent Contractors and all Schedule C Entities</p>

USING ENTITIES TAXED AS PARTNERSHIPS TO CREATE OR SHIFT BASIS

WHY ALL APPRECIATED ASSETS MAY BE BEST OWNED BY PARTNERSHIP TAXED ENTITIES AND WHY TO KEEP PARTNERSHIPS OWNING SECURITIES SEPARATE AND APART FROM ANYTHING THAT WOULD BE IDENTIFIED AS A “TRADE OR BUSINESS”

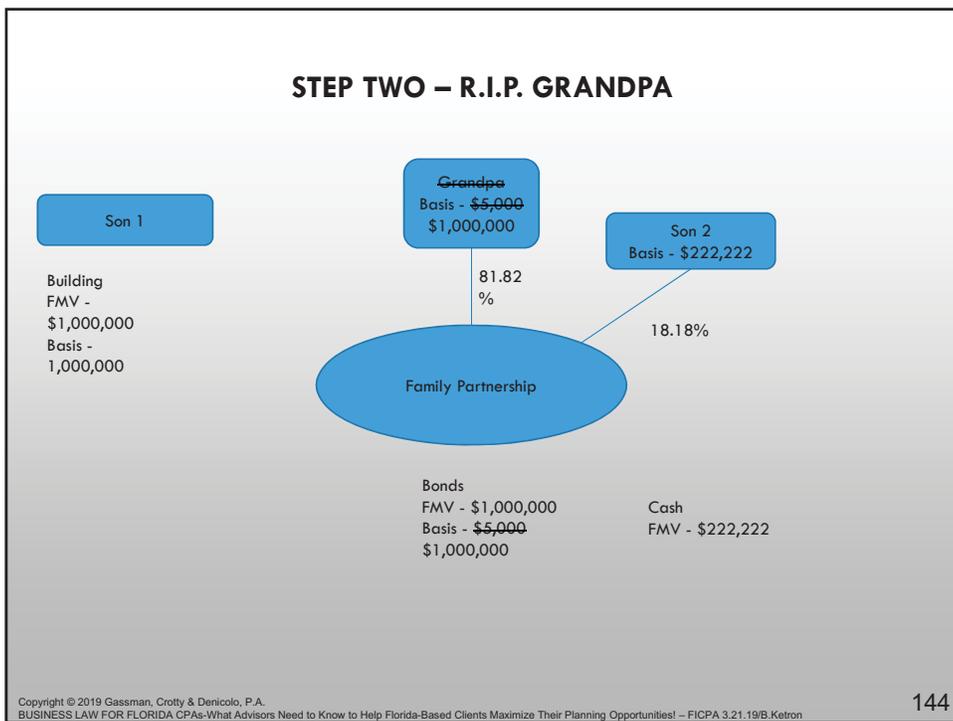


STEP ONE – DISTRIBUTE BUILDING TO SON IN COMPLETE LIQUIDATION OF SON 1'S PARTNERSHIP INTEREST



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STEP TWO – R.I.P. GRANDPA



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**WHY ALL APPRECIATED ASSETS MAY BE BEST OWNED BY PARTNERSHIP
TAXED ENTITIES AND WHY TO KEEP PARTNERSHIPS OWNING SECURITIES
SEPARATE AND APART FROM ANYTHING THAT WOULD BE IDENTIFIED AS A
“TRADE OR BUSINESS”**

Recent white papers and presentations in the tax and estate planning community have brought to light that the partnership tax law may allow for basis in one partnership asset to be shifted to another partnership asset before sale in order to defer or avoid capital gains taxes, depreciation recapture and other types of income that must normally be realized on sale or disposition of an asset.

Readers who are not familiar with this concept, or who have not understood its basic application, can benefit from reading the following example, which is also illustrated by exhibits available from the authors.

Grandpa owns 45% of a partnership and has a \$5,000 basis in his partnership interest, Son 1 owns 45% of the partnership with a \$1,000,000 basis, and Son 2 owns 10% of the partnership with a \$222,222 basis. The partnership owns a building that Grandpa put in after it was almost fully depreciated worth \$1,000,000, bonds that Son 1 put in worth \$1,000,000 with a \$1,000,000 basis, and \$222,222 of cash that Son 2 put in. The partnership has made what is called a 754 election to cause basis adjustments as below described, and the property has been in the partnership for at least 7 years.

Assume that the partnership has a contract to sell the building for \$1,000,000 and first distributes the building to Son 1 in liquidation of his 45% of his ownership interest. When Son 1, with a \$1,000,000 outside basis in the partnership, receives an asset in exchange for his partnership interest, Son 1's basis in the exchanged asset is equal to his 1,000,000 outside basis in the partnership. As a result, Son 1 receives a \$1,000,000 basis in the building and can sell it and pay no capital gains tax.

As a result of the above basis shift the bond portfolio basis of the partnership moves from 1,000,000 to \$5,000, Grandpa owns 81.82% of the partnership, and Son 2 owns 18.18% of the partnership.

When Grandpa dies his partnership interest basis goes to fair market value and this also increases the partnership's basis in the bonds, if a proper 743 election is in place.

**WHY ALL APPRECIATED ASSETS MAY BE BEST OWNED BY PARTNERSHIP
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This has saved income taxes on \$1,000,000 of depreciation recapture on the building, and \$1,000,000 of capital gains tax on the bond portfolio.

It is important to note that unless the partnership is considered an investment partnership, as discussed in more detail below, IRC §731(c) treats marketable securities as cash when distributed from the partnership, triggering capital gains to the extent the distribution exceeds the partner's outside basis in the partnership. An investment partnership is a partnership that has never been engaged in a trade or business if 90% or more of the partnership's value consists of investment type assets (i.e. stocks, bonds, cash, foreign currencies, commodities, etc.). Therefore, assuming that the partnership in the above example is not an investment partnership the distribution of bonds to a partner would trigger capital gains to the extent that the distribution exceeds the partner's basis. For example, if bonds worth \$100,000 were distributed to Grandpa prior to his death, Grandpa would have a capital gain of \$95,000 (\$100,000 - \$5,000).

What if instead of the above there is a partnership owning only the building and cash, with Grandpa owning 90% and an S corporation owning 10%. Grandpa's basis is still only \$5,000. The partnership has made a 754 election and has owned the building for over 7 years.

Grandpa asks his tax advisor what to do when he wants to sell the building, and wants to use the above technique. How can he get another asset into the partnership and another partner with a high basis to facilitate the planning described above?

If Son 1 happens to have \$1,000,000 of bonds that cost him \$1,000,000 then he can contribute the bonds to the partnership and after waiting for at least two years in order to avoid the disguised sale rules of IRC Section 707, Son 1 may receive the building in the same manner as described above with the same result.

What if Son 1 doesn't have these bonds but has good credit? Son 1 may arrange to guarantee a loan to borrow \$1,000,000 from a bank to buy \$1,000,000 of bonds in the name of the partnership, and Son 1 will agree to be responsible for the \$1,000,000 loan. As a result of this, Son 1 has a \$1,000,000 basis in the partnership and the partnership has a \$1,000,000 basis in the assets.

After waiting two years, Son 1 can receive the building in liquidation of his partnership interest with a \$1,000,000 basis, sell it for \$1,000,000 and recognize no gain. Son 1 can then pay off the loan, and Grandpa can own 90% of the partnership and his estate and the partnership will receive a stepped up basis when he dies.

WHY ALL APPRECIATED ASSETS MAY BE BEST OWNED BY PARTNERSHIP TAXED ENTITIES AND WHY TO KEEP PARTNERSHIPS OWNING SECURITIES SEPARATE AND APART FROM ANYTHING THAT WOULD BE IDENTIFIED AS A "TRADE OR BUSINESS"

As the result of the above, and also for the reasons described below, it is arguable that almost any appreciated asset owned by a family member should be owned by an entity that can be taxed as a partnership so that this type of planning can be implemented.

For example, if Grandpa has stocks worth \$1,000,000 with a basis of \$5,000 and needs to sell these over time to pay for living expenses, the same technique can be used if Son 1 can contribute \$1,000,000 worth of assets to the partnership with a basis of \$1,000,000.

In addition to the above benefits, it may be necessary in the future to recommend that senior family members own high basis assets, so as to not be subject to tax on death if the US adopts a "deemed sale on death" capital gains tax like Canada has. Until then Grandpa would want to own the low basis assets or partnership interests to get a step up on death.

By keeping both low and high basis assets in partnerships like the one described above, the family can shift basis to Grandpa or away from Grandpa based upon what the tax law and preferred family planning situation is in the future.

By putting the assets into partnerships now, the family enhances the chances of being grandfathered if the tax laws ever change to prevent this type of planning. Presently no known IRS initiative or effort exists to prevent this type of planning.

In addition to the above, LLC's and Limited Partnerships provide many other benefits, including creditor protection, management opportunities, and valuation discounts to avoid estate tax if needed. Where valuation discounts are not needed for estate tax purposes it can be important to give each partner a "put right" so that on death the valuation of the partnership interest held can be the value of the underlying assets multiplied by the percentage of ownership.

Where different classifications of assets are owned by a family, it will often be advisable to have separate assets in separate partnerships for both tax and state law planning purposes.

As the result of the above, advisors should consider looking at assets and the basis thereof and determining how to be sure that appreciated or hopefully appreciating assets will be under a partnership for at least 7 years when the time may come to sell them.

WHY ALL APPRECIATED ASSETS MAY BE BEST OWNED BY PARTNERSHIP TAXED ENTITIES AND WHY TO KEEP PARTNERSHIPS OWNING SECURITIES SEPARATE AND APART FROM ANYTHING THAT WOULD BE IDENTIFIED AS A "TRADE OR BUSINESS"

The above strategy can also work for partnerships that own appreciated stocks and/or mutual funds. It is very important that any partnership owning stocks not be engaged in an active trade or business to avoid what is known as the 731(c) rule. This rule treats marketable securities as cash and requires gain recognition on distributions in which the fair market value of the distributed asset(s) exceed the partner's outside basis in the partnership. This rule does not apply if the partnership is considered an investment partnership under 731(c)(3)(C). This is why there will normally be separate partnerships for buildings and other active assets and stocks and other passive assets. 731(c)(3)(c) will also apply to the ownership of stock in non S corporations.

Even if the partnership distribution did not meet one of the exceptions to 731(c) the result of the above examples would not change and no gain would be recognized due to the fact that the partner did not receive marketable securities or cash in excess of his outside basis in the partnership.

Unfortunately S corporation stock cannot be owned by an entity taxed as a partnership, so this technique will not work for S corporation stock.

The authors thank Paul Lee of Northern Trust and Jerry Hesch for their thorough and skillful analysis, white papers and lectures on this topic, and on other topics in the estate and tax area.

FICPA – CPAs in Industry Conference

Business Law for Florida CPAs - - What Advisors Need To Know To Help Florida-Based Clients Maximize Their Planning Opportunities!

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Tampa Airport Marriott
Tampa, Florida

Thursday, March 21st and
Friday, March 22, 2019



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***Federal Tax Update for
Businesses, Including Pass Thru
Entities***

Mark E. Brechbill, CPA

Mark Brechbill, CPA
Managing Director
MB Wealth Solutions, LLC and Mark Brechbill, PLLC

Mark Brechbill is the founder of MB Wealth Solutions, LLC, a business, financial and tax advisory firm specializing in transition strategies for family owned businesses. Mark is also one of the founding members of Mark Brechbill, PLLC, a certified public accounting firm primarily serving the audit, review, and compilation needs of small to mid-sized businesses in Stuart, FL and on the Treasure Coast. Mark concentrates most of his time in the firms' business and tax consulting practices, assisting with business formation and organization, purchases and sales, and reorganizations. He also sponsors and hosts a series of call-in radio programs entitled "**Treasure Coast Solutions**" that answers listeners' questions pertaining to business, financial planning, real estate, construction and community activities.

Prior to founding the firm in 1994, Mark spent over thirteen years in the banking industry, serving as Chief Operating Officer of a community bank and CFO of a \$600 million regional bank. He began his career in public accounting with Arthur Andersen & Co., in Chicago, Illinois working in the firm's banking division. He also worked with McGladrey, Hansen, Dunn & Company, (now McGladrey & Pullen), in their Peoria, Illinois office. Mark has a Bachelor of Business degree in accounting from Western Illinois University, is licensed as a CPA in Florida, and is a member of the FICPA and AICPA. Additionally, as with most CPAs, he is active in a number of civic and community programs (primarily as Treasurer).

Presentation Will Be Available
On-line After the Conference

Wayfair Waves

*Karen A. Lake, CPA
James H. Sutton Jr, CPA, Esq., LLM*

Karen A. Lake, CPA
Associate Director of Tax Services
Berkowitz Pollack Brant, Advisors and Accountants

For nearly 20 years, Karen Lake has placed her focus on helping businesses and individuals develop their tax structures. Through reducing their state tax risk, improving cash flow and obtaining federal and state credits and incentives, Karen is successful at resolving tax controversies in a favorable manner.

Prior professional experience enables her to bring a 360 degree perspective to companies' state tax planning. With experience as a senior advisor in Big 4 public accounting firm, a member of corporate tax department, and finally as a state auditor, she understands the full range of tax issues most businesses face.

James H. Sutton, Jr, CPA, Esq, LLM
Shareholder
Moffa, Sutton & Donnini, PA

James Sutton is a CPA and Attorney with an almost exclusive focus on Florida sales and use tax controversy. His firm, Moffa, Sutton, & Donnini, PA handles audits, protest, litigation, consulting, collections, revocations, and criminal defense all revolving around sales tax matters. A graduate of Stetson (Bachelors and Juris Doctorate), Mr. Sutton is heavily involved with the FICPA and speaks at conferences and local chapters throughout Florida. You can read up more about Mr. Sutton at www.FloridaSalesTax.com.

Wayfair Waves

FICPA CPA in Industry Conference
Tampa, FL
March 21-22, 2019

Karen Lake, CPA
Berkowitz Pollack Brant
James Sutton, Esq.
Moffa, Sutton, & Donnini

Karen Lake, CPA

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Karen's professional experience enables her to bring a 360 degree perspective to companies' state tax planning.

With experience as a senior advisor in Big 4 public accounting firm, a member of corporate tax department, and a state auditor, she understands the full range of tax issues most businesses face brings proactive, real-world solutions to complex business environments.



JAMES SUTTON, CPA, ESQ

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James is a Florida-licensed CPA and attorney with more than 20 years of experience in a major CPA firm, law firm and industry,

His practice is almost exclusively Florida sales and use tax controversy (audit, protest, litigation, collections, revocations, voluntary disclosure, & criminal defense)

He has deep Florida roots as a Hatter (x2), Bulldog and Gator and is an adjunct professor of Law at Stetson University and Boston University. He serves as State and Local Tax chairman for the American Academy of Attorney CPAs and president of Florida Chapter of AA-CPA



Agenda

- Sales Tax Nexus Background
- *South Dakota v Wayfair* recap
- State Responses
- Potential Congressional action
- Practical considerations for tax compliance, including potential implications for remote sellers

Sales Tax Nexus Background

- In *Quill*, the Supreme Court upheld a bright line physical presence standard.
 - The Court ruled that a taxpayer must have a physical presence in a state in order to require sales tax for purchases made by in-state customers.
 - The existence of customers in a state did not create sufficient contacts with that state to have "substantial nexus" under the Commerce Clause.
- Physical presence nexus could be created through in-state employees, in-state deliveries made by one's own truck, physical presence of property, voluntary registration or incorporation.

JE

Background, continued

- Post-*Quill*, states tried several methods to expand nexus:
 - Affiliate nexus
 - Click-through nexus
 - Economic nexus
 - Use tax notice and reporting
 - Cookie nexus

JE

South Dakota v. Wayfair (recap)

Ruling on June 21, 2018 overturned Quill Corp. v North Dakota (1992) & National Bellas Hess, Inc. v. Department of Revenue of Illinois because the "physical presence rule....is unsound and incorrect"

- Enables economic nexus Retailer ecommerce business with large eCommerce sales, but who lack physical presence in many jurisdictions, may now be subject to tax collection and remittance responsibilities.
- Affects all remote sellers and
- Software as a Service ("SaaS") and Digital Goods / Services - Business selling SaaS, Cloud and digital goods/services to end users, which lack large nexus footprint, may now be subject to additional sales and use tax collection and remittance responsibilities.
- In-bound Companies - Business with no U.S. permanent establishment ("PE") that sell into the U.S. may now have U.S. sale or use tax collection and remittance responsibilities.



JE

States Reaction

In the wake of the South Dakota v Wayfair US Supreme Court holding on June 21, 2018, states around the country have been scrambling to create new "economic nexus" laws. Mimicking South Dakota's law, most states are enacting laws that assert taxing jurisdiction over out of state companies that sell more than \$100,000 of taxable goods or services OR 200 or more transactions into the state. The individual state laws vary slightly with the dollar threshold or the number of transactions, but they are all very similar.

JE

Economic Nexus Thresholds

Common Attributes	Less Common Attributes
<ul style="list-style-type: none">• \$ in gross revenue per year from sales in that state (\$10,000 to \$500,000)• # of sales transactions per year in that state (100 to 200)	<ul style="list-style-type: none">• Remote seller has a referral/reseller agreement with an in-state retailer• Use of in-state servers or services, or in-state payment processing, etc.• Affiliate nexus, "cookie" nexus, marketplace nexus, click-through nexus

KL

Threshold Implementation

Threshold timelines

This Year or Last Year

Retroactive application

- With the exception of register, collect, and remit sales tax for transactions made once you pass a state's threshold (\$ of #) given that the state law's effective date has already passed.

JE

Threshold Example - Pennsylvania

Threshold

- \$10,000 of taxable sales of tangible property to Pennsylvania customers effective April 1, 2018. Specified digital goods effective April 1, 2019.



- Pennsylvania asserts economic nexus, but only as an elective alternative to default notice and reporting requirements. A "remote seller" is a person, other than a marketplace facilitator, marketplace seller, or referrer, that does not maintain a place of business in Pennsylvania and sells taxable tangible personal property at retail through any forum. A "marketplace facilitator" is a person that facilitates sales of tangible personal property at retail by listing or advertising tangible personal property for sale at retail in any forum, and (whether directly or indirectly through agreements or arrangements with third parties) collecting payment from the purchaser, and transmitting the payment to the person selling the property. A "marketplace seller" is a person that has an agreement with a marketplace facilitator under which the marketplace facilitator facilitates sales for the marketplace seller.

JHS

Threshold Example - Massachusetts

Threshold

- \$500,000 retail sales of tangible property or services to MA customers or 100 transactions with MA buyers



Implementation

- If the seller met a threshold in the previous year (2017), they must get licenses and pay applicable sales taxes for all 2018 transactions that occur in 2018 after the injunction is lifted.
- If the seller meets a threshold in 2018 after the injunction is lifted, they must get licensed and pay applicable sales taxes on all transactions that occur after they meet the threshold and for all of 2019 transactions

JHS

Potential Responses from the States

- 32 states currently have economic nexus thresholds for sales tax reporting purposes, including 17 which have provisions similar to the South Dakota law upheld by the U.S. Supreme Court.
- Additionally, new legislation expected to adopt a South Dakota-type nexus standard
- There are 10 states with use tax notification statutes
 - Requires non-collecting retailers to inform customers and the state that they may have a use tax obligation for taxable purchases
- States will respond in different ways to utilize this new power, but it is not unlimited power
- Anticipated enforcement actions

JE

Florida -Economic Nexus & Marketplace Facilitator

- Florida was highly expected to jump on the bandwagon and Florida Senate Bill 1112 was introduced to do just that. Interestingly, the proposed statute would not only create an economic nexus law, but would also create what is commonly known as a “marketplace facilitator” statute as well. Oh... and the bill also suggested reducing the sales tax on commercial rent from 5.7% to 4.2%, presumably funded by the increase in sales tax revenue from these new nexus laws. The legislation, if enacted, would be effective July 1, 2019. Continue reading for further explanation on these two types of statutes and the text of the statutes themselves. Senate Bill

KL

Marketplace Facilitator States

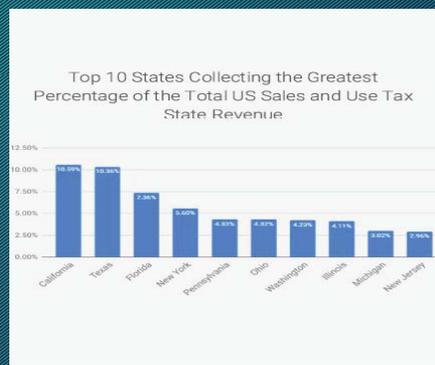
- Alabama
- Arizona
- Connecticut
- Iowa
- Minnesota
- New Jersey
- Oklahoma
- Pennsylvania
- Rhode Island
- South Dakota
- Washington

JHS

Likely Impact to Small Businesses

States with Highest risk:

- California
- Texas
- Florida
- New York
- Pennsylvania
- Ohio
- Washington
- Illinois
- Michigan
- New Jersey



JE

Questions and Answers

JE

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JE

FASB A&A Update

Michael Cheng, CPA

Michael K. Cheng
Senior Project Manager
Financial Accounting Standards Board

Mike Cheng joined the staff of the Financial Accounting Standards Board (FASB) in 2012. Mike serves as the Private Company Council (PCC) coordinator where he is responsible for all PCC related matters. He also leads the Board's private company decision making framework project focused on determining whether and in what circumstances it is appropriate to adjust financial reporting requirements for private companies following Generally Accepted Accounting Principles (GAAP). In addition, he serves on the FASB project teams working on policies and procedures for consolidations.

Prior to joining the FASB, Mike held various management positions with PricewaterhouseCoopers (PwC). Most recently, he was an Audit Senior Manager—Private Company Services in the firm's Stamford, Connecticut office. From 2003-2011, he also held roles of increasing responsibility in PwC's Core Assurance divisions in Buffalo and Rochester, New York.

Mike earned his Bachelor of Science degree in Accounting with a concentration in Finance from Binghamton University in Binghamton, New York.

FASB Update

Michael Cheng, Partner

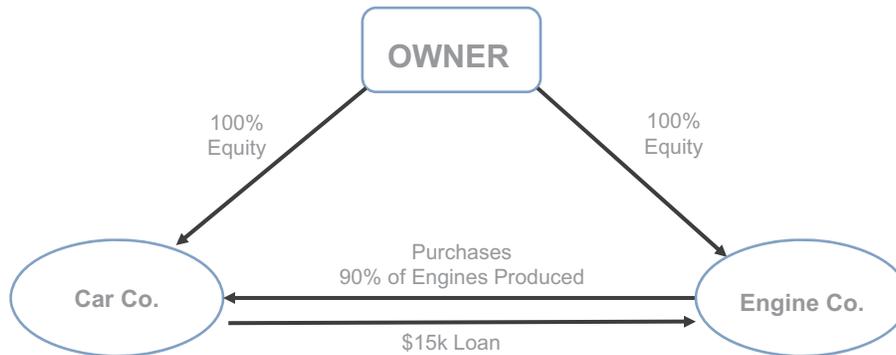


Consolidations (ASU 2018-17)

Focus on Private Company Accounting
Alternative



Consolidations - Engine Co. Example



- Engine Co. has insufficient equity (Equity = 5% of funding)
 - Industry standard for sufficient equity is 20%
- Loan to Engine Co. represents 15% of funding
- Engine Co financed remaining 80% with Bank ABC
- Car Co. makes significant decisions
- Arms-length pricing

3

Consolidations: Private Company Alternative



Policy Election not to apply VIE Guidance to Entities Under Common Control

Criteria to Qualify

- Private company and legal entity under common control
- Common control parent **is not** a PBE
- Legal Entity **is not** a PBE
- Don't have a majority of the voting interest in the Legal Entity

Required Disclosures to under involvement and exposure to legal entity under common control

Accounting Alternative for Leasing Arrangements under common control (ASU 2014-07) **Superseded**

Combined statements still permitted if entities are under common control

4

Consolidations – Private Company Disclosures



In addition to existing related party disclosures, disclose the following:

- a) Nature and risks associated with legal entity under common control.
- b) How does legal entity affect the reporting entity's balance sheet, financial performance, and cash flows.
- c) Assets and liabilities on the reporting entity's balance sheet resulting from its involvement with the legal entity
- d) The reporting entity's maximum exposure to loss related to the legal entity.
- e) If the entity's maximum exposure to loss exceeds assets and liabilities as described in (c), the reporting entity shall provide information to allow users of financial statements to understand the excess exposure. Consider both explicit and implicit arrangements

5

Effective Date



- Calendar-Year End Private Companies -> 2021
- Early adoption permitted

6

Leases

An overview



Scope and Scope Exceptions



Scope: All leases, including subleases

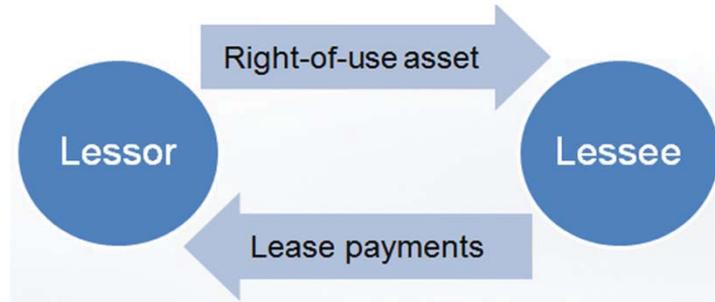
Topic 842 does not apply to:

Leases of intangible assets (Topic 350)	Leases of assets under construction (Topic 360)	Leases of biological assets (Topic 905)	Leases to explore for or use nonregenerative resources (Topics 930 and 932)	Leases of inventory (Topic 330)
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Right-of-Use Model



A lease contract conveys the right to use an asset (the underlying asset) for a period of time in exchange for consideration

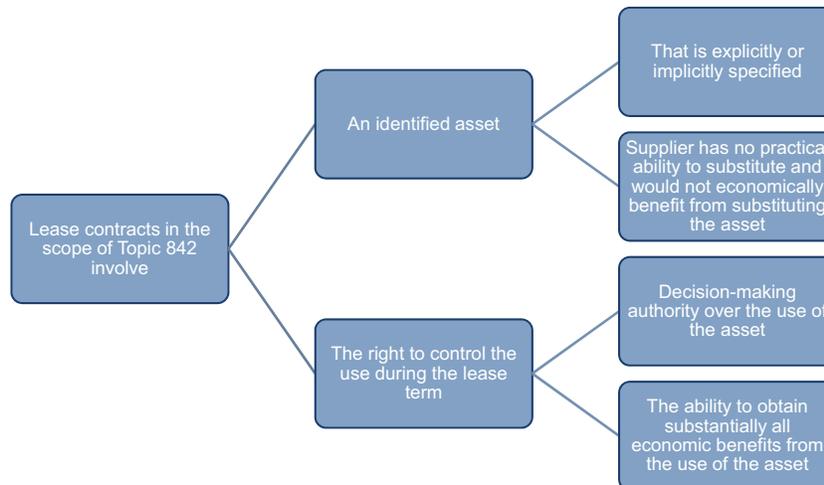


9



Identifying a Lease

Identifying a Lease



11

Example – Fiber Optic Cable



Is there a Lease?

- Customer enters into a 15 year contract for the right to use 3 specified fibers within a larger cable connecting Hong Kong to Tokyo.
- Customer makes decisions about the use of the fibers (e.g., decides what data and how much those fibers will transport)
- Supplier is responsible for repairs and maintenance.

Is there a Lease?

- Customer enters into a 15 year contract with Supplier for the right to use a specified amount of capacity within a cable connecting Hong Kong to Tokyo.
- Capacity is equivalent to the full use of 3 strands within a cable (the cable has 15 fibers with similar capacities).
- Supplier makes decisions about the transmission of data (e.g., which fibers are used and electronic equipment used to operate the cable).

12

Commencement Date



■ Lease Commencement Date

Starts when lessee has the right to use the underlying asset (transfer of control)

Timing of lease payments does not affect the commencement date

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Example – When does a lease start?



Example:

- Lessee signs a lease contract on **12/31/2020** for a prime location in a shopping mall
- Lessor grants access to location starting on **5/1/2021**
- Lessee begins construction of leasehold improvements on **5/1/2021**
- Store is anticipated to open on **7/1/2021** when lease payments are due to the Lessor

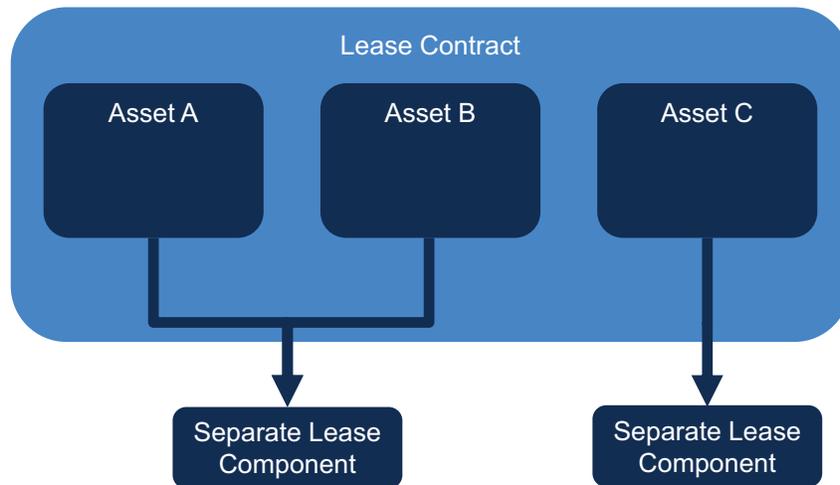
Questions:

- What is the lease commencement date?
- Which date do I use to determine the discount rate?

14

Unit of Account

Separate Lease Components



Separate Lease Components

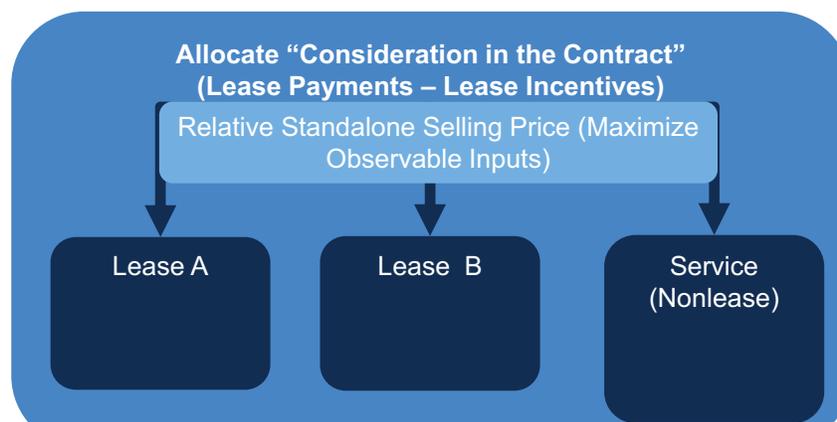
▪ A right to use an underlying asset is a separate lease component if both:

- ⑩ Lessee can benefit from use of the asset on its own or together with other readily available resources
- ⑩ The underlying asset is neither dependent on, nor highly interrelated with, the other underlying assets in the contract.

Rights to use two or more underlying assets may be a single lease component

Similar to the distinct guidance in Topic 606 (the new revenue recognition standard).

Separate Lease & Nonlease Components



***Accounting Policy Election** – Lessee may elect, by class of underlying asset, not to separate nonlease components from the lease component and account for the combined components as a single *lease* component.

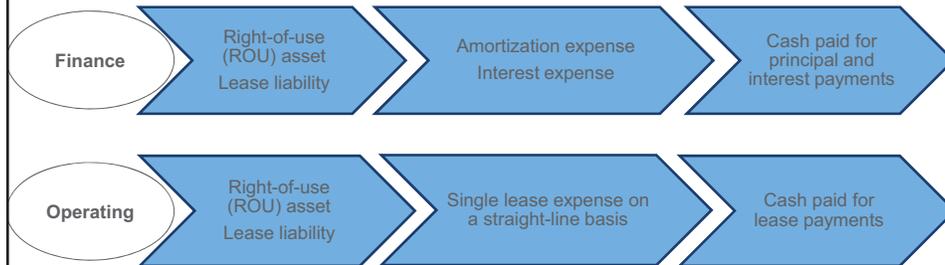
Lessee Accounting

Lessee Model

Finance lease if any of the following are met
(otherwise it's an operating lease):

Lease transfers ownership of the underlying asset to the lessee by the end of the lease term	Lease grants the lessee an option to purchase the asset that the lessee is reasonably certain to exercise	Lease term is for a major part of the remaining economic life of the underlying asset	PV of the lease payments and any lease residual value guarantee not reflected in the lease payments, equal or exceed substantially all of the asset's FV	Underlying asset is of such specialized nature that it is expected to have no alternative use to the lessor at the end of the lease term
--	---	---	--	--

Lessee Accounting Overview



Classification is similar to the classification in Topic 840
Recognition and measurement exemption for short-term leases

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Lease Liability



Lease liability



Present value of remaining payments, using a discount rate calculated on the basis of information available at the commencement date

ROU Asset - Operating



Lease liability

+ Unamortized initial direct costs

± Prepaid/Accrued lease payments

- Remaining balance of lease incentives received

ROU Asset

Lease Term and Purchase Options



Initial Measurement

Consider all relevant factors that create an economic incentive to exercise a renewal/purchase option

Include if *reasonably certain* will exercise



Subsequent Measurement

Lessee

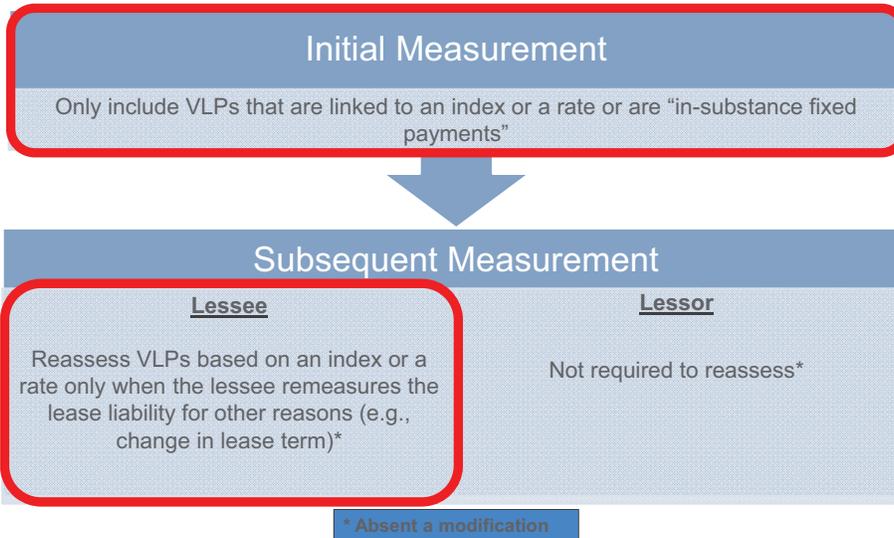
Reassess only upon the occurrence of a significant event/change in circumstances that is within the control of the lessee*

Lessor

Not required to reassess*

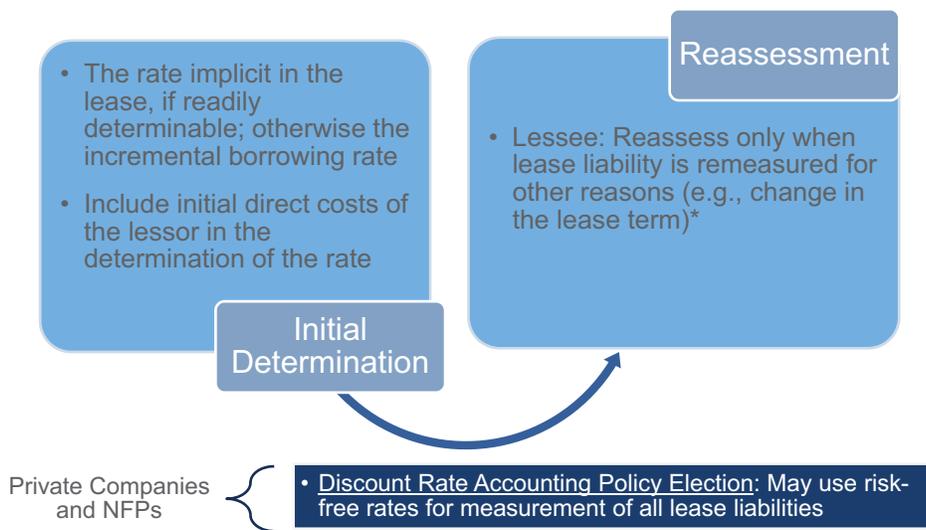
* Absent a modification

Variable Lease Payments (VLPs)



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Discount Rate



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Initial Direct Costs (IDC)



IDC = *only* incremental costs that an entity would not have incurred if the lease had not been obtained (executed)

	Sales-Type	Direct Financing	Operating
Lessor	<p><u>Selling profit or loss:</u> Expense IDC at lease commencement</p> <p><u>No selling profit or loss:</u> Include IDC in initial measurement of net investment in the lease</p>	Include IDC in initial measurement of net investment in the lease	Recognize as an expense over the lease term on the same basis as lease income
Lessee	<p>Finance & Operating</p> <p>Include in the initial measurement of the ROU asset and amortize the costs over the lease term</p>		

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Initial Direct Costs (IDC)



Included

- Commissions
- Payments made to an existing tenant to incentivize that tenant to terminate its lease

Excluded

- General overheads
- Cost to evaluate prospective lessee's financial condition
- Costs to negotiate lease terms and conditions
- Legal fees

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Lessee – Simple Finance Lease

- 5 year equipment lease entered at end of 2020
- Rent payment equals \$1,000 the first year and increases \$100 each year thereafter. Total payments over 5 years is \$6,000
- Discount rate is 6%
- No initial direct costs recognized
- Assume this is a finance lease

Year	Lease Liability				Right of Use Asset			Lease Cost =(a)+(b)
	Beg	Int. (6%) (a)	Payment	End	Beg	Amort. (b)	Ending	
2020	-	-	-	(5,006)	-	-	5,006	-
2021	(5,006)	(300)	1,000	(4,306)	5,006	(1,001)	4,005	(1,302)
2022	(4,306)	(258)	1,100	(3,465)	4,005	(1,001)	3,003	(1,260)
2023	(3,465)	(208)	1,200	(2,472)	3,003	(1,001)	2,002	(1,209)
2024	(2,472)	(148)	1,300	(1,321)	2,002	(1,001)	1,001	(1,150)
2025	(1,321)	(79)	1,400	(0)	1,001	(1,001)	-	(1,080)
								(6,000)

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Lessee – Simple Operating Lease

- 5 year lease warehouse lease entered at end of 2020
- Rent payment equals \$1,000 the first year and increases \$100 each year thereafter. Total payments over 5 years is \$6,000
- Discount rate is 6%
- No initial direct costs recognized
- Assume this is an operating lease

Year	Rent Expense (a)	Lease Liability				Right of Use Asset		
		Beg	Int. (6%) (b)	Payment	End	Beg	Amort.	Ending =(a)-(b)
2020	-	-	-	-	(5,006)	-	-	5,006
2021	1,200	(5,006)	(300)	1,000	(4,306)	5,006	(900)	4,106
2022	1,200	(4,306)	(258)	1,100	(3,465)	4,106	(942)	3,165
2023	1,200	(3,465)	(208)	1,200	(2,472)	3,165	(992)	2,172
2024	1,200	(2,472)	(148)	1,300	(1,321)	2,172	(1,052)	1,121
2025	1,200	(1,321)	(79)	1,400	(0)	1,121	(1,121)	-
	6,000							

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Lessee – Simple Operating Lease w/ IDC

- 5 year lease warehouse lease entered at end of 2020
- Rent payment equals \$1,000 the first year and increases \$100 each year thereafter. Total payments over 5 years is \$6,000
- Discount rate is 6%
- \$500 paid as lease commissions to leasing agent
- Assume this is an operating lease

Year	Rent Expense (a)	Lease Liability				Right of Use Asset		
		Beg	Int. (6%) (b)	Payment	End	Beg	Amort. =(a)-(b)	Ending
2020	-	-	-	-	(5,006)	-	-	5,506
2021	1,300	(5,006)	(300)	1,000	(4,306)	5,506	(1,000)	4,506
2022	1,300	(4,306)	(258)	1,100	(3,465)	4,506	(1,042)	3,465
2023	1,300	(3,465)	(208)	1,200	(2,472)	3,465	(1,092)	2,372
2024	1,300	(2,472)	(148)	1,300	(1,321)	2,372	(1,152)	1,221
2025	1,300	(1,321)	(79)	1,400	(0)	1,221	(1,221)	0
	6,500							

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Example – Simple Operating Lease w/ IDC

- End of 2020 – Transfer Control of Warehouse and Payment of Lease Commission
 - DR ROU Asset (3) \$5,506 (Lease liability + IDC)
 - CR Lease Liability (2) \$5,006 (PV of remaining lease payments)
 - CR Cash (1) \$500 (IDC – lease commissions)

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Example – Simple Operating Lease w/ IDC



- End of 2021 – Lease expense and payment
 - DR Lease Expense (3) \$1,300 (Straight-line rent expense)
 - DR Lease Liability (2) \$1,000 (2021 lease payment)
 - CR Lease Liability (4) \$300 (6% Interest on lease liability)
 - CR ROU Asset (5) \$1,000 (ROU amortization)
 - CR Cash (1) \$1,000 (2021 lease payment)

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Example – Simple Operating Lease w/ IDC



- End of 2025 – Lease expense and payment
 - DR Lease Expense (3) \$1,300 (Straight-line rent expense)
 - DR Lease Liability (2) \$1,400 (2025 lease payment)
 - CR Lease Liability (4) \$79 (6% Interest on lease liability)
 - CR ROU Asset (5) \$1,221 (ROU amortization)
 - CR Cash (1) \$1,400 (2025 lease payment)

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Short-Term Leases Exemption



Recognition and Measurement Exemption

- For leases with a GAAP lease term of 12 months or less
- No longer based on maximum possible term, now aligned with definition of lease term

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Risk-Free Rate Election (Nonpublic)



Recognition and Measurement Election

- Accounting policy election of risk-free rate to measure lease liability

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Related-Party Leases



Recognition and Measurement

- Account for related-party leases based on legally enforceable terms and conditions of the lease

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Lessee Disclosures

Disclosures



Overall Disclosure Objective

- The objective of the disclosure requirements is to enable users of financial statements to assess the amount, timing, and uncertainty of cash flows arising from leases.
- A lessee and a lessor should consider the level of detail necessary to satisfy the disclosure objective.

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Lessee Disclosures



Qualitative Disclosure Requirements

- Information about:
 - The nature of leases
 - Leases that have not yet commenced but that create significant rights and obligations for the lessee
 - Significant assumptions and judgments made in applying the requirements of the leases standard
- The main terms and conditions of any sale and leaseback transactions.
- Whether an accounting policy election was made for the short-term lease exemption.

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Lessee Disclosures



Quantitative Disclosure Requirements

- Finance lease expense, segregated between amortization of ROU assets and interest on lease liabilities
- Operating lease cost
- Short-term lease cost, excluding expenses relating to leases with a lease term of one month or less
- Variable lease cost
- Sublease income
- Gains and losses arising from sale and leaseback transactions

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Lessee Disclosures



Quantitative Disclosure Requirements

- Separately for Finance and Operating leases:
 - Cash paid for amounts included in lease liabilities, segregated between operating and financing cash flows
 - Lease liabilities arising from obtaining ROU assets
 - Weighted-average remaining lease term as of the reporting date
 - Weighted-average discount rate for leases as of the reporting date
- Lease payments maturity analysis (similar to that in Topic 840 disclosures)

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Transition Approach and Practical Expedients

Modified Retrospective → Earliest Period Presented
OR Date of Adoption

Package of practical expedients:

Definition

Classification

Initial Direct
Costs

May elect to use *hindsight* for lease term (lease renewals and purchase options) & Easements

Existing leveraged leases were grandfathered

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Effective Date

Public Companies*

- Fiscal years beginning after December 15, 2018, including interim periods within those fiscal years

All Other Organizations

- Fiscal years beginning after December 15, 2019 and interim periods beginning after December 15, 2020

Early Application

- Permitted for all organizations

* "Public Companies" refers to the following: (1) public business entities, (2) a not-for-profit entity that has issued, or is a conduit bond obligor for, securities that are traded, listed, or quoted on an exchange or an-over-the-counter market, and (3) an employee benefit plan that files or furnishes statements with or to the SEC

44

Implementation Costs incurred in a Cloud Computing Arrangement (ASU 2018-15)

FASB Activities Related to Cloud Computing

EITF Issue 00-03 addressed whether a hosting arrangement includes software from a vendor perspective

EITF now addressing implementation costs of a hosting arrangement that does not include a license

ASU 2015-05 addressed whether a hosting arrangement includes a license from a customer perspective

Today's Accounting



EITF Issue addresses

	On-premise software	CCAs with a license	CCAs without a license
Balance sheet - asset	Present an asset for the cost of the software	Present an asset for the portion of the CCA fee related to the cost of the software	No asset is presented for the software, but a prepaid asset may be presented if the CCA fee is paid in advance
Balance sheet - liability	Present a liability for any unpaid amounts	Present a liability for any unpaid amounts	No liability is presented until payment is due
Treatment of implementation costs	Costs to implement the software are capitalized as part of the software asset	Costs to implement the software are capitalized as part of the software asset	Diversify today, but many implementation costs are not capitalized as an asset and are expensed
Income statement presentation	<ol style="list-style-type: none"> 1) Generally straight-line amortization of software cost over useful life of software 2) Interest expense on the liability 	<ol style="list-style-type: none"> 1) Generally straight-line amortization of software cost over useful life of software 2) Interest expense on the liability 3) Generally G&A expense for the portion of CCA fee related to the hosting service 	<ol style="list-style-type: none"> 1) Generally straight-line G&A expense for CCA fee 2) Many implementation costs are expensed as the underlying activities are performed (near contract inception)

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Final Standard



- Implementation costs of CCAs that are service contracts would be accounted for in accordance with the guidance in Subtopic 350-40
- The amortization period of the costs would be the term of the arrangement, including periods covered by renewal options of the CCA that are reasonably certain to be exercised
- The amortization of the costs would be recorded in the same line item on the income statement as the fees for the CCA

Results in consistent capitalization of implementation costs across platforms, but not consistent accounting for the software component

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Final Standard (cont.)

- Require existing disclosures in paragraph 350-40-50-1 for implementation costs of a hosting arrangement that is a service contract, supplemented with description of hosting arrangement
- Transition Method Options
 - Prospectively to arrangements entered into, renewed, or materially modified after the effective date
 - Retrospectively
- Effective Date
 - Public Business Entity - interim periods and annual periods beginning after December 15, 2019
 - Everyone else - Annual periods beginning after December 15, 2020

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Simplifying the Balance Sheet Classification of Debt - Current versus Noncurrent (almost finished)

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Balance Sheet Classification of Debt – Key Changes

Only matters if you present a classified Balance Sheet

Classification Principle

- Contractual Due or Contractual Rights
- Balance Sheet Date

What are the significant changes?

- Refinances
- Subjective Acceleration Clauses (SACs) or Material Adverse Clauses (MACs)

What remains?

- Waivers of Debt Covenant Violations
- BUT requires separate presentation

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Effective Dates

Public business entities

- Fiscal years beginning after **December 15, 2019**, and interim periods within those fiscal years

Non-public business entities

- Fiscal years beginning after **December 15, 2020**, and interim periods within fiscal years beginning after **December 15, 2021**

Early adoption permitted

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Questions?



Risk Management Insurance

Karyn Roeling, CPCU, CIC

Karyn Roeling
President & Owner
Seibert Insurance Agency

Day-to-day operations of Seibert Insurance are managed by Karyn Seibert Roeling. After graduating from Florida State University in 2002 with a degree in Risk Management and Insurance (which is ranked one of the top 10 programs in the US), she joined USAA Insurance Company as a Property and Casualty Underwriter and soon advanced to a management role as a Lead Underwriter. In 2005, Mrs. Roeling decided to join the family business where she quickly rose through the ranks, received her Chartered Property Casualty Underwriter designation (CPCU) in 2007, and was named vice president in 2008 and president in 2012.

Mrs. Roeling has also taken leadership roles in several of the industry's professional associations, as a Director of Professional Insurance Agents Florida, a founding member of Fraud Alert Team Tampa Bay and a Future Florida Insurance Leader with Florida Association of Insurance Agents.

She is also a leadership team member for BNI, the world's largest referral organization, and has personally participated in community organizations such as the March of Dimes, Cystic Fibrosis, "Lock up" for MDA, Paint Your Heart Out Tampa Bay (I organized a team to paint a home in Tampa) and was a restaurant recruiter for The Best Taste of Tampa Bay (raises funds for TBPAC).

Risk Management and Insurance

Karyn Roeling, CPCU, CIC
Seibert Insurance Agency

A little about me...

- RMI Degree
- CPCU/CIC
- Underwriter
- Agency Owner
- Board Member
- Carrier Councils
- National Speaker



A few stats...

40% of businesses do not reopen following a disaster

Source: FEMA Study

60% of small businesses that lose data will shut down within 6 months

Source: Clutch Research Study

43% of cyber attacks target small businesses

Source: Symantec

33% of all business bankruptcies caused by employee theft

Source: Static Brain Research Institute

New & Emerging Risks

Digital and Cyber Risk

- ✓ Social Engineering
- ✓ Business Interruption from Cyber



New & Emerging Risks

Employment Practices Liability

- ✓ #MeToo Movement
- ✓ Sexual Harassment



New & Emerging Risks

Workers Compensation

- ✓ Return to work programs
- ✓ Unemployment rates

New & Emerging Risks

Business Auto

- ✓ Fleet Management
- ✓ Loss Experience

Endorsements...make or break...

Driver Other Car

- ✓ Only vehicle is a company vehicle

Uninsured Motorists Coverage

- ✓ 3 in 5 drivers are uninsured or underinsured in Florida

Endorsements...make or break...

Hired and Non-Owned Auto

- ✓ Personally owned vehicle or rented vehicle

Defensive outside vs inside the limits

- ✓ Defense costs normally make up most of the claim

Endorsements...make or break...

Business Interruption

- ✓ Pays for expenses that don't go away when the business is destroyed

Other States provision- Workers Comp

- ✓ If employees travel out of state/country for work

Endorsements...make or break...

Flood

- ✓ Totally excluded under the Property policy

Inland Marine

- ✓ Forklifts

Endorsements...make or break...

Off- premises power failure

- ✓ No direct damage to the building = no coverage...unless.....

Crime Coverage

- ✓ 33% of all business bankruptcies caused by employee theft

*Static Brain Research Institute



In closing...

Don't let you or your clients become a statistic.

Make sure they have reviewed their insurance plan with their Insurance Agent in the past year.

Questions?



Thank you!

Karyn Roeling
Seibert Insurance Agency
Tampa, FL

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Lease Accounting: Practical Implications

Mark Marmon, CPA

Mark Marmon
Practice Leader, Advisory Services
RGP

Mark is a Regional Director in the company's client solutions group. In this role he is responsible for identifying, developing, and deploying solutions throughout the Eastern US with a focus in the Accounting, Finance and Risk areas.

Mark has more than 25 years of business experience, blending consulting roles with finance leadership roles. His experience has been focused on increasing the return on investment across accounting and finance organizations, including the application of technical accounting pronouncements, process analysis and improvement, transaction support including post-merger integration and finance operations infrastructure design. Mark has held the roles of Chief Financial Officer for a privately-held company, VP Finance for a publicly-held company, and Managing Director and Regional Practice Director for a global consulting organization. Mark also led an Area Practice for outsourcing and process improvement for a Big Four Accounting Firm.



LEASE ACCOUNTING: PRACTICAL IMPLICATIONS

MARK MARMON, ADVISORY PRACTICE DIRECTOR, RGP

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OVERVIEW OF OUR DISCUSSION:

- 1. LEASE ACCOUNTING STANDARD**
- 2. IMPLICATIONS FOR BUSINESS OPERATIONS**
- 3. IMPLICATIONS FOR DEBT COVENANTS**
- 4. IMPLICATIONS FOR CONTROLS MONITORING**

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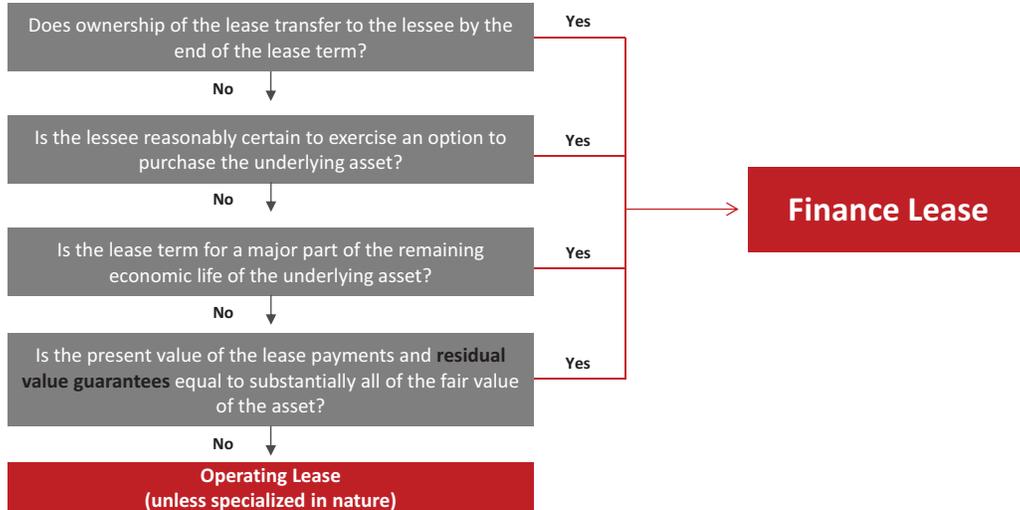
1. LEASE ACCOUNTING STANDARD

BASIC CHANGES TO LEASE ACCOUNTING UNDER ASC 842



LESSEE	LESSOR
Most leases recorded on the balance sheet	Similar to ASC 840
Two types of leases: <ul style="list-style-type: none">• Operating Lease• Finance Lease	Three types: <ul style="list-style-type: none">• Operating• Direct Finance• Sales type
Recognize a Right of Use (ROU) Asset and Lease Liability	Initial selling profit deferred if lessor does not transfer control of asset
Income statement recognition depend on lease type	Leveraged lease model eliminated

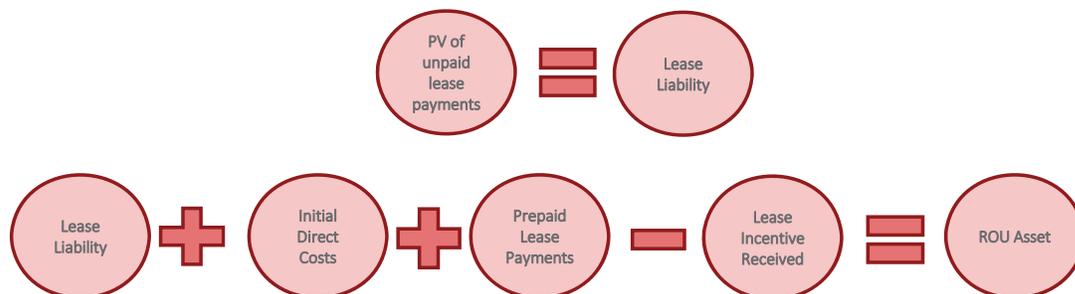
LEASE CLASSIFICATION (LESSEE)



BALANCE SHEET ACCOUNTING

At the commencement date of a lease, a Lessee would recognize:

- **A Liability** to make lease payments (i.e. the lease liability), and
- **An Asset** representing the right to use the underlying asset during the lease term (i.e., the right-of-use asset, or “ROU asset”)



2. IMPLICATIONS FOR BUSINESS OPERATIONS

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IMPACTS ACROSS MULTIPLE AREAS OF BUSINESS



Accounting & Finance

- Financial statements
- Governance
- Tax, FP&A and internal audit

HR

- Policies and procedures
- Organizational design

Assets & Facilities

- Equipment
- Buildings
- Lease contract management & administration

Procurement & Sourcing

- Acquisition of new leases

Sales & Marketing

- Negotiations
- Close processes

IT

- Systems
- Data and integrations

Real Estate

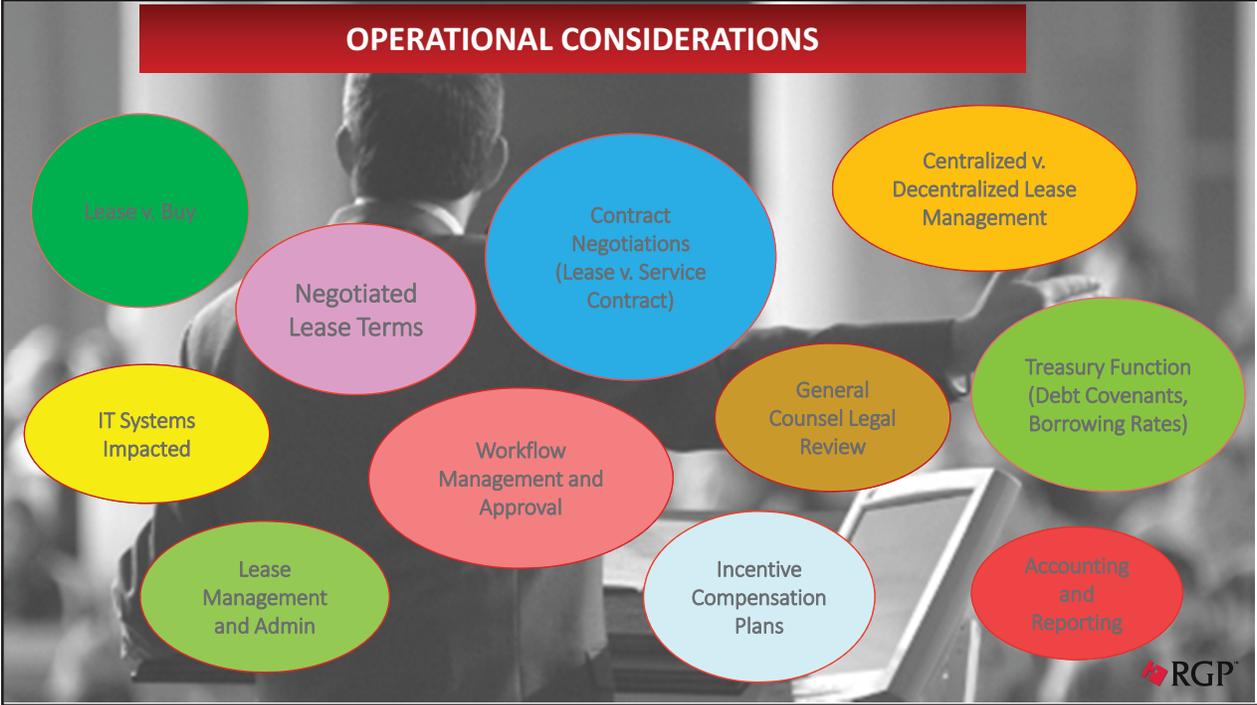
- Lessees/lessors

Legal

- Lease review and approval

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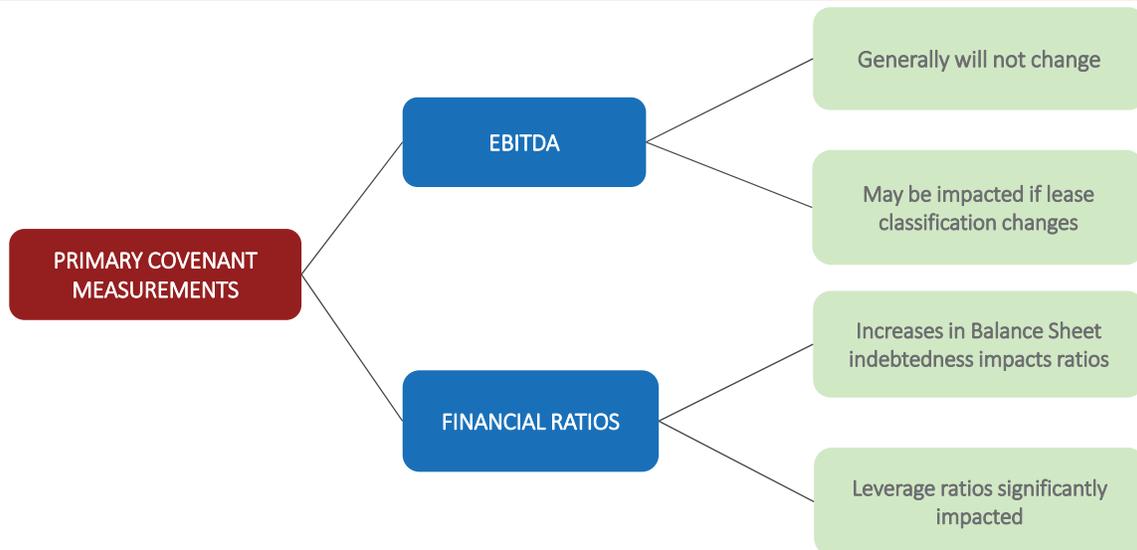
TECHNOLOGY CONSIDERATIONS

LEASE MANAGEMENT/ADMIN	LEASE ACCOUNTING
Manage end-to-end lifecycle	Automate accounting policy decisions for consistency
Focus on Return on Investment in new processes, systems <ul style="list-style-type: none"> Termination dates (end payments) Accurate adjustments to variable lease costs Accurate and timely payments (cash management) 	Integrate data from lease system to ERP and AP platforms
Data analytics <ul style="list-style-type: none"> Lease v. Buy Negotiation (rates, renewals, amendments) Asset efficiency analysis 	Accurate calculations for journal entries, amortization tables and financial disclosures
Management approval and control	Access to information through customized reporting

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3. IMPLICATIONS FOR DEBT COVENANTS

CHANGES IN COMPLIANCE CALCULATIONS



POTENTIAL IMPACTS ON RATIOS



Financial Metrics Impact of New Lease Accounting Standards

Financial Metric	US GAAP	IFRS	Financial Metric	US GAAP	IFRS
Asset Turnover	Decrease	Decrease	Net Cash Flow	Unchanged	Unchanged
Interest Cover	Unchanged	Varies	Gross Margin	Unchanged	Unchanged
EBIT/Operating Profit	Unchanged	Increase	Operating Efficiency Ratio	Unchanged	Increase
EBITDA	Unchanged	Increase	Return on Assets	Decrease	Decrease
EBITDAR	Unchanged	Unchanged	Return on Equity	Unchanged	Varies
Profit or Loss	Unchanged	Varies	Quick Ratio	Decrease	Decrease
Earnings Per Share	Unchanged	Varies	Current Ratio	Unchanged	Decrease
Operating Cash Flow	Unchanged	Increase	Debt/Equity Ratio	Unchanged	Decrease
Return On Capital Employed	Decrease	Varies	Net Worth	Decrease	Unchanged

www.leaseaccelerator.com



PRACTICAL IMPLICATIONS ON COVENANT COMPLIANCE



HOW COMPANIES ARE MANAGING CHANGE:

Concept of "Frozen GAAP"

- Covenant calculations continue to apply ASC 840 (old rules)
- Must maintain financials for reporting under both "old" and "new" GAAP rules for leases

Amending Credit Agreements

- Creditor and Lender agree to amend ratios/covenants with new targets consistent with ASC 842 impacts
- Negative impact is cost-Lender generally charges amendment fees plus Creditor incurs legal fees

Debt Recapitalization

- Extreme measure for an accounting change
- Generally occurs if there are valid business reasons to renegotiate debt instruments (outside of changes in accounting rules)

4. IMPLICATIONS FOR CONTROLS MONITORING

CONTROLS DURING ADOPTION/IMPLEMENTATION



FOCUS ON METHODOLOGY AND ACTIVITIES THROUGH ADOPTION PHASE:

Concept of Completeness

- Data Management—identifying all leases
- Identification and documentation of embedded leases
- Documentation of accounting conclusions, technical papers

Transition Activities

- Accuracy of calculations and resulting journal entries
- Accuracy and completeness of financial disclosures
- Documentation of accounting policies and practical expedient elections

IT Controls

- Access and operations controls over lease accounting system/module
- Security controls (source data and interfaces)

CONTROLS FOLLOWING ADOPTION

CONTROLS MONITORING BEGINNING "DAY 2":

Operational Controls

- Documentation of process for initiating new leases
 - Lease vs. Buy analysis
 - Procurement involvement in negotiation
 - Management review and approval
- Documentation of process for exiting leases
 - Return or take ownership of asset
 - End lease payments (especially auto-pay)

Financial Reporting Controls

- Accuracy of calculations and resulting journal entries
- Accuracy and completeness of financial disclosures
- Documentation of reassessment evaluation procedures
- Segregation of duties

CONTROLS FOLLOWING ADOPTION

CONTROLS MONITORING BEGINNING "DAY 2":

IT General Controls

- Accuracy of source data
- Access controls (including administration) over system
- Security controls
 - SAAS vs. on-premises
 - Integrations with other internal systems
 - Third-party access
- Independent certification
 - SSAE 18 SOC reporting
 - Other security verification as needed

QUESTIONS?

Thank you



Mark Marmon, CPA

Director

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Panel on Negotiating Covenants - Part 1

*Raymond Monteleone
Patrick M. Mosley
Greg Parks
Steve Wilder*

Raymond Monteleone, CPA President & Founding Partner Paladin Global Partners

Ray Monteleone is President of Paladin Global Partners, a business management consulting firm, and Partner with Dannelly, Monteleone & Associates, a full-service CPA firm. Ray focuses on strategic management, problem solving, mergers & acquisitions, compensation consulting, growing companies, and senior executive mentoring for clients worldwide in industries such as healthcare, high tech, manufacturing, education, financial institutions and not-for-profit organizations. He held numerous directorships such as Rexall Sundown, First American Railways, Durango & Silverton Narrow Gauge Railway, Rush Holdings, and Pointe Financial Corporation, and he currently chairs the Advisory Board of Algy Costume and is a member of the Board for Chen, Moore & Associates, chairing the Ethics & Governance Committee.

A CPA, Ray was Partner/Tax Director at Arthur Young for the South Florida practice and consultant with Holland & Knight involved in strategic planning & practice development. Ray was VP of Global Corporate Development for Sensomatic Electronics Corporation and interim CFO. He was President of First American Railways, Chairman and Co-CEO for Loren Industries, and Deputy Commissioner, COO/CFO for the Florida Department of Education and was an officer of Laser Spine Institute.

Monteleone serves professional/civic organizations including Florida Tax Watch (member of the Board), Leadership Florida (member of the Audit Committee), Executive Leadership Orientation Committee (Class '02), Florida Atlantic University Foundation Board, Chair of the Audit Committee and serving on the Executive, Finance and Nominating Committees, and FAU Broward Alumni Council (Past Chairman), Florida Institute of CPAs, American Institute of CPAs, Leadership Broward Foundation (Past President), and Past Vice Chair of the Fort Lauderdale Chamber and current member. Previously on the Board of the Broward Education Foundation (Past Chair, serving for 2 terms) and served on the South Broward Hospital District (Commissioner). Ray was named Leader of the Year by Leadership Broward, Outstanding Broward Alumnus by FAU and inducted into its Parliament of the Owls (2010), just to name a few.

Monteleone graduated cum laude from New York Institute of Technology, attended the Arthur Young Harvard Business School program, received his MBA from FAU, and he lectures at universities and professional association seminars

Patrick M. Mosley
Shareholder
Hill Ward Henderson

Patrick focuses his practice on bankruptcy and creditors' rights, corporate reorganizations and restructurings, and commercial litigation. Mr. Mosley regularly represents distressed companies, unsecured creditors' committees, and purchasers of assets in all aspects of the bankruptcy process. He also works with secured and unsecured creditors in workouts, non-bankruptcy corporate reorganizations, and acquisitions of troubled businesses.

Mr. Mosley's corporate practice includes general corporate advice, mergers and acquisitions, institutional lending, real property purchase and sale transactions, and commercial development.

Prior to joining the firm, Patrick served as a law clerk to the Honorable Colleen A. Brown, United States Bankruptcy Judge for the District of Vermont, and the Honorable Catherine Peek McEwen, United States Bankruptcy Judge for the Middle District of Florida.

Greg Parks
Vice President/Relationship Manager
Wells Fargo

Greg Parks is Vice President/Relationship Manager for the Tampa Commercial Banking Group at Wells Fargo. He is based in Tampa, with a territory that spans 11 counties along the west coast of Florida. His focus is on middle market companies with annual revenues between \$50MM - \$2B, as well as new relationship development. Prior to relocating to Tampa in 2011, Greg lived in Winston-Salem, NC, where he began his banking career 13 years ago. Greg graduated from Wake Forest University as well as two formal bank credit programs.

J. Stephen (Steve) Wilder
CFO/CIO
City Furniture, Inc

Steve Wilder began his career as a CPA and was fortunate to join his favorite client, Waterbed City, in 1981. Waterbed City provided Steve with the opportunity to learn and grow as the company rebranded to City Furniture in 1994 and became one of South Florida's most recognizable brands. Steve has been City Furniture's Chief Financial Officer since 2001 and in 2012 took on the additional role of Chief Information Officer. Steve has participated in both CFO and CIO Forums sponsored by the South Florida Business Journal and received the "2015 Apogee Award - Broward County CFO of the Year", presented by South Florida Business Wealth magazine, and the "2017 CIO Lifetime Achievement Recipient", presented by the South Florida Business Journal. Steve earned a Bachelor Degree in Accounting from the University of South Florida and an MBA from Florida Atlantic University. He maintains an active Florida CPA License and is a member of the American Institute of CPAs, the Florida Institute of CPAs, and Financial Executives International.

There is no PowerPoint presentation for this session.

***Panel on Negotiating Covenants -
Part 2***

*Raymond Monteleone
Patrick M. Mosley
Greg Parks
Steve Wilder*

Raymond Monteleone, CPA President & Founding Partner Paladin Global Partners

Ray Monteleone is President of Paladin Global Partners, a business management consulting firm, and Partner with Dannelly, Monteleone & Associates, a full-service CPA firm. Ray focuses on strategic management, problem solving, mergers & acquisitions, compensation consulting, growing companies, and senior executive mentoring for clients worldwide in industries such as healthcare, high tech, manufacturing, education, financial institutions and not-for-profit organizations. He held numerous directorships such as Rexall Sundown, First American Railways, Durango & Silverton Narrow Gauge Railway, Rush Holdings, and Pointe Financial Corporation, and he currently chairs the Advisory Board of Algy Costume and is a member of the Board for Chen, Moore & Associates, chairing the Ethics & Governance Committee.

A CPA, Ray was Partner/Tax Director at Arthur Young for the South Florida practice and consultant with Holland & Knight involved in strategic planning & practice development. Ray was VP of Global Corporate Development for Sensomatic Electronics Corporation and interim CFO. He was President of First American Railways, Chairman and Co-CEO for Loren Industries, and Deputy Commissioner, COO/CFO for the Florida Department of Education and was an officer of Laser Spine Institute.

Monteleone serves professional/civic organizations including Florida Tax Watch (member of the Board), Leadership Florida (member of the Audit Committee), Executive Leadership Orientation Committee (Class '02), Florida Atlantic University Foundation Board, Chair of the Audit Committee and serving on the Executive, Finance and Nominating Committees, and FAU Broward Alumni Council (Past Chairman), Florida Institute of CPAs, American Institute of CPAs, Leadership Broward Foundation (Past President), and Past Vice Chair of the Fort Lauderdale Chamber and current member. Previously on the Board of the Broward Education Foundation (Past Chair, serving for 2 terms) and served on the South Broward Hospital District (Commissioner). Ray was named Leader of the Year by Leadership Broward, Outstanding Broward Alumnus by FAU and inducted into its Parliament of the Owls (2010), just to name a few.

Monteleone graduated cum laude from New York Institute of Technology, attended the Arthur Young Harvard Business School program, received his MBA from FAU, and he lectures at universities and professional association seminars

Patrick M. Mosley
Shareholder
Hill Ward Henderson

Patrick focuses his practice on bankruptcy and creditors' rights, corporate reorganizations and restructurings, and commercial litigation. Mr. Mosley regularly represents distressed companies, unsecured creditors' committees, and purchasers of assets in all aspects of the bankruptcy process. He also works with secured and unsecured creditors in workouts, non-bankruptcy corporate reorganizations, and acquisitions of troubled businesses.

Mr. Mosley's corporate practice includes general corporate advice, mergers and acquisitions, institutional lending, real property purchase and sale transactions, and commercial development.

Prior to joining the firm, Patrick served as a law clerk to the Honorable Colleen A. Brown, United States Bankruptcy Judge for the District of Vermont, and the Honorable Catherine Peek McEwen, United States Bankruptcy Judge for the Middle District of Florida.

Greg Parks
Vice President/Relationship Manager
Wells Fargo

Greg Parks is Vice President/Relationship Manager for the Tampa Commercial Banking Group at Wells Fargo. He is based in Tampa, with a territory that spans 11 counties along the west coast of Florida. His focus is on middle market companies with annual revenues between \$50MM - \$2B, as well as new relationship development. Prior to relocating to Tampa in 2011, Greg lived in Winston-Salem, NC, where he began his banking career 13 years ago. Greg graduated from Wake Forest University as well as two formal bank credit programs.

J. Stephen (Steve) Wilder
CFO/CIO
City Furniture, Inc

Steve Wilder began his career as a CPA and was fortunate to join his favorite client, Waterbed City, in 1981. Waterbed City provided Steve with the opportunity to learn and grow as the company rebranded to City Furniture in 1994 and became one of South Florida's most recognizable brands. Steve has been City Furniture's Chief Financial Officer since 2001 and in 2012 took on the additional role of Chief Information Officer. Steve has participated in both CFO and CIO Forums sponsored by the South Florida Business Journal and received the "2015 Apogee Award - Broward County CFO of the Year", presented by South Florida Business Wealth magazine, and the "2017 CIO Lifetime Achievement Recipient", presented by the South Florida Business Journal. Steve earned a Bachelor Degree in Accounting from the University of South Florida and an MBA from Florida Atlantic University. He maintains an active Florida CPA License and is a member of the American Institute of CPAs, the Florida Institute of CPAs, and Financial Executives International.

There is no PowerPoint presentation for this session.

***8 Financial Headwinds –
Obstacles that Make it Difficult
to Retire Well in this World***

Jeff Juniper

Jeff Juniper

Registered Investment Representative

Juniper Wealth Management, LLC

Jeff is licensed as both an insurance advisor and a Registered Investment Advisor, a combination that allows him to offer his clients an array of financial solutions to meet their individual needs and goals. Jeff has the fiduciary responsibility to serve his clients' best interests, and he takes this duty incredibly seriously.

Being securities licensed, Jeff can review a client's complete portfolio and make suggestions to help them better achieve their goals, helping them find the financial solution that is right for them and their unique situation.

He often educates and counsels clients on:

- Avoiding the erosive effects of 401(k) fees (which he says are more devastating to a nest egg than most investors realize)
- Creating tax-free/deferred retirement income
- Repositioning funds to help them realize their dreams of financial independence

Being an independent financial advisor is important to Jeff and his clients, he says: "Imagine going to a mechanic who only has a certain set of tools he can use. 'If it's not in this toolbox, you can't use it,' his boss tells him. But your car is a high-performance vehicle that requires more sophisticated tools. Do you stay with him and hope for the best, or do you go to a skilled mechanic who has access to any tool he might need to get the job done well?"

In addition to offering insurance, financial, wealth and tax planning, Jeff partners with CPAs and attorneys to create client trusts.

He is proud to have his son, Shaun, working alongside him in the family firm. A Southern Californian from birth, and son of a financial advisor himself, Jeff loves being outdoors, whether paddle boarding, boating or playing golf.

8 Financial Headwinds

Obstacles that make it difficult to retire well in this world.

Juniper Wealth Management, LLC.

Jeff Juniper Registered Investment Advisor RIA

Florida & California

954-815-2961

Jeff@JuniperWealthManagement.com

WealthandRetirement.com &

JuniperWealthManagement.com

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LLC.**

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Jeff@JuniperWealthManagement.com

954-815-2961 FL & 949-497-1199 CA

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Learning the Language of a Fraudster

R. Kevin Cross, CPA, MST, EA

R. Kevin Cross, MST, EA, CPA, NTPI Fellow®
Author, Speaker, Tax Consultant and Fraud Expert
Account 417, LLC

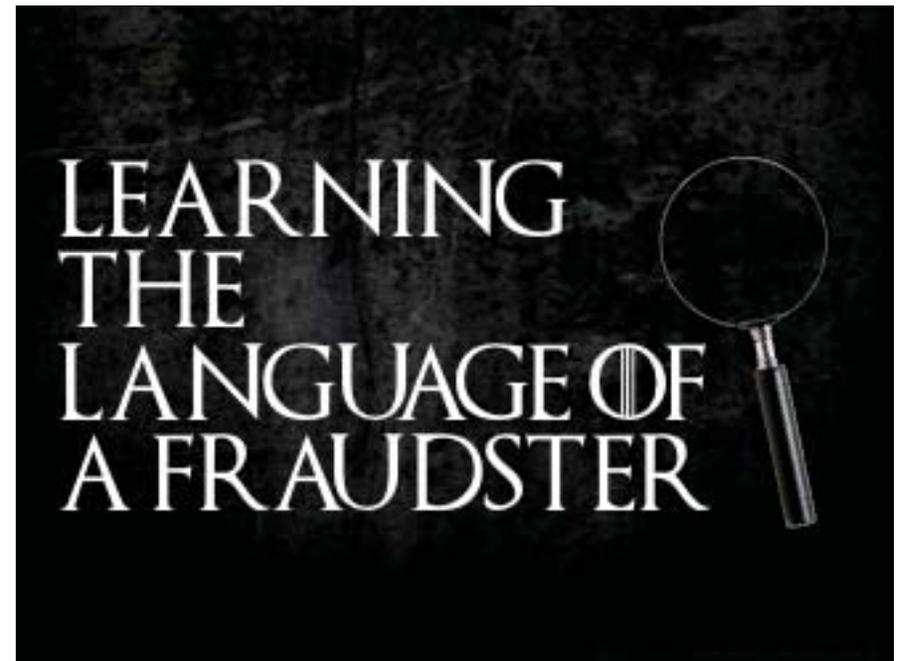
If the old adage "it takes one to know one" has an ounce of truth, then the insights gained from our speaker will hold some valuable lessons for your practice.

Just as the FBI utilizes the knowledge of former criminals, this is your opportunity to glean from a convicted fraudster.

Thirty years ago he was the mastermind behind a large embezzlement scheme from the Broward County sheriff's department where he worked as an accountant for the notorious Cuban cop Sheriff Nick Navarro.

As chronicled in his book "*Embezzlement, a True Crime Story*", Kevin Cross learned the error of his ways and became a CPA, the only CPA in the state of Florida and Georgia with such a background. He started, lead and sold a successful accounting practice after 17 years.

Today Kevin is a licensed CPA, author and financial counselor who uses his wit, wisdom and unique insight to lecture on fraud, mentor, advise, and teach on the ethical use of money.





FRAUD

* NOUN \ˈFRɒd\ "DECEIT, TRICKERY, SHARP PRACTICE, OR BREACH OF CONFIDENCE, PERPETRATED FOR PROFIT OR TO GAIN SOME UNFAIR OR DISHONEST ADVANTAGE"





\$3 MILLION IS THE THRESHOLD FOR THE FBI TO TAKE THE CASE "FBI AGENT BRETT HOOD 6/10/11"

"THOSE INDIVIDUALS WHO ENGAGE IN SUCH WIDESPREAD AND HIGH DOLLAR THEFTS RUN THE VERY REAL RISK OF BECOMING TARGETS IN A FEDERAL INVESTIGATION."
MARK F. GIULIANO, SPECIAL AGENT IN CHARGE, FBI ATLANTA FIELD OFFICE, STATED."

FRAUD



* 7% OF CORPORATE REVENUE IS LOST TO FRAUD (\$9 PER EMPLOYEE OR \$994 B. TOTAL)

* IN SMALL BUSINESSES (LESS THAN 100 EMPLOYEES), THE MEDIAN LOSS IS \$175,000

* THE AVE. FRAUD LASTS FOR OVER 2 YEARS

WHO COMMITS FRAUD?

AGE

- * OVER 60 – 2.% (\$527,000)
- * 51 – 60 – 15.1% (\$250,000)
- * 41 – 50 – 32.0% (\$173,000)
- * 36 – 40 – 16.2% (\$80,000)
- * 31 – 35 – 18.0% (\$75,000)
- * 26 – 30 – 10.7% (\$25,000)
- * LESS THAN 26 – 5.9% (\$18,000)

CRIMINAL HISTORY

* NEVER CHARGED OR
CONVICTED - 82.9%

* HAD PRIOR CONVICTIONS
- 11.6%

* CHARGED BUT NOT
CONVICTED - 5.5%

TIME ON JOB

* LESS THAN 1 YR - 6.7% (\$26,000)

* 1 - 2 YEARS - 20.0% (\$50,000)

* 3 - 5 YEARS - 27.0% (\$98,000)

* 6 - 10 YEARS - 22.8% (\$120,000)

* MORE THAN 10 YRS - 23.5%
(171,000)

EDUCATION

- * POSTGRADUATE DEGREE - 9.1%
- * BACHELOR DEGREE - 41.5%
- * HIGH SCHOOL OR LESS - 49.5%

DETECTION OF FRAUD

- * NOTIFIED BY POLICE 0.9
- * EXTERNAL AUDIT 10.9%
- * INTERNAL CONTROLS 18.4%
- * BY ACCIDENT 21.3%
- * INTERNAL AUDIT 23.8%
- * TIP 39.6%

“THE INFECTIOUSNESS
OF CRIME IS LIKE
THAT OF THE
PLAGUE.”

- NAPOLEON



FOUR ELEMENTS OF FRAUD

1. COMMISSION OF THE ACT ITSELF
2. INTENTION TO COMMIT THE ACT
3. CONCEALMENT OF THE ACT
4. LOSS





- # MOTIVE
- * PRESSURE PLACED ON MANAGERS TO PERFORM
 - * UNUSUALLY HIGH PERSONAL DEBT
 - * EXCESSIVE GAMBLING HABIT
 - * UNDUE FAMILY OR PEER PRESSURE TO SUCCEED
 - * ALCOHOL OR DRUG PROBLEMS

HE WHO DIES WITH
THE MOST TOYS
WINS.

- MALCOLM FORBES

OPPORTUNITY

* KNOWLEDGE OF WEAK INTERNAL
CONTROLS

* ACCOUNTING ANOMALIES ARE NOT
MONITORED

* LACK OF SUPERVISION

* UNETHICAL TONE AT THE TOP

* BELIEF THE EMPLOYEE WON'T GET
CAUGHT

THE HUMAN
HEART IS AN IDOL
FACTORY.

- JOHN CALVIN

ABILITY TO RATIONALIZE

* EMPLOYEE BELIEVES HE OR SHE IS NOT BEING ADEQUATELY COMPENSATED FOR THE WORK - THE ORGANIZATION OWES THEM

* FEELING OF INSUFFICIENT RECOGNITION FOR JOB PERFORMANCE

* PERSONAL NEED FOR MORE MONEY

* MANY EMPLOYEES WHO COMMIT FRAUD FULLY INTEND TO RETURN THE MONEY

"A STRANGE MELANCHOLY ...
HAUNTS THE INHABITANTS
IN THE MIDST OF
ABUNDANCE. THE
INCOMPLETE JOYS OF THIS
WORLD WILL NEVER SATISFY
THE HUMAN HEART."

-ALEXIS DE TOCQUEVILLE, ON AMERICA

CAPABILITY

"MANY FRAUDS... WOULD NOT HAVE OCCURRED WITHOUT THE RIGHT PERSON WITH THE RIGHT CAPABILITIES IN PLACE. OPPORTUNITY OPENS THE DOORWAY TO FRAUD, AND INCENTIVE AND RATIONALIZATION CAN DRAW THE PERSON TOWARD IT. BUT THE PERSON MUST HAVE THE CAPABILITY TO RECOGNIZE THE OPEN DOORWAY AS AN OPPORTUNITY AND TO TAKE ADVANTAGE OF IT BY WALKING THROUGH, NOT JUST ONCE, BUT TIME AND TIME AGAIN. ACCORDINGLY, THE CRITICAL QUESTION IS, 'WHO COULD TURN AN OPPORTUNITY FOR FRAUD INTO REALITY?'"

David T. Wolfe, CPA, Dana R. Herrmann, PhD

“A MAN’S LIFE DOES
NOT CONSIST IN THE
ABUNDANCE OF HIS
POSSESSIONS”.

— JESUS

(QUOTED BY LUKE 12:15 IN THE 1ST CENTURY)



DETECTION VS. DETERRENCE

DETECTION

* INVOLVES A REVIEW OF HISTORICAL TRANSACTIONS TO IDENTIFY INDICATORS OF A NON-CONFORMING TRANSACTION

DETERRENCE

- * THE PROACTIVE IDENTIFICATION AND REMOVAL OF THE CAUSAL AND ENABLING FACTORS OF FRAUD.
- * ANALYZING THE ENVIRONMENT, CONDITIONS, PEOPLE, ESSENTIALLY LOOKING INTO THE FUTURE BASED ON THE CURRENT CLIMATE AND CONDITIONS AND ELIMINATING THE FACTORS THAT MAY CAUSE FRAUD.

DETERRENCE

MINORITY
REPORT

EVERYBODY RUNS

BEST FRAUD TODAY

MAKE YOUR
OWN DUMMY
RECEIPTS

THIS IS THE
LARGEST
CURRENT
EMPLOYEE
FRAUD TODAY



Update / Create Receipt

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CASHIER: WESS
CUSTOMER: JIP

PURCHASE:

PAPER ROLL	519.00
212 PEN PK	99.10
BLK SPIN INK	999.10

NET +78 TRX+86.00
PST +82 TRX+88.00

TOTAL+172.00

PAYMENT METHOD: CREDIT CARD
TRANSACTION #1234567891 -881
DATE: 05/15/2015 0:15:07 PM

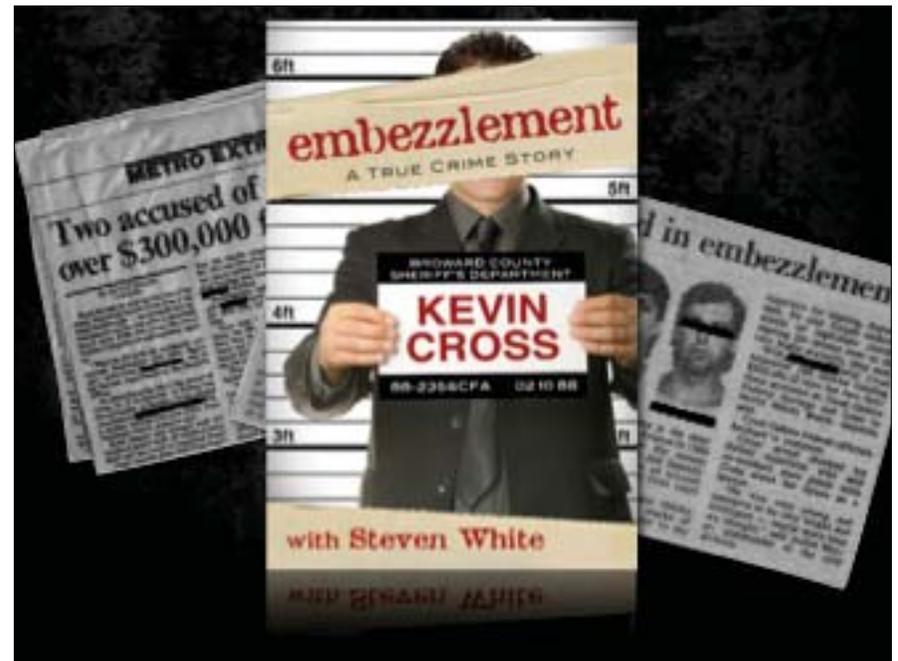
NO RETURNS WITHOUT RECEIPT

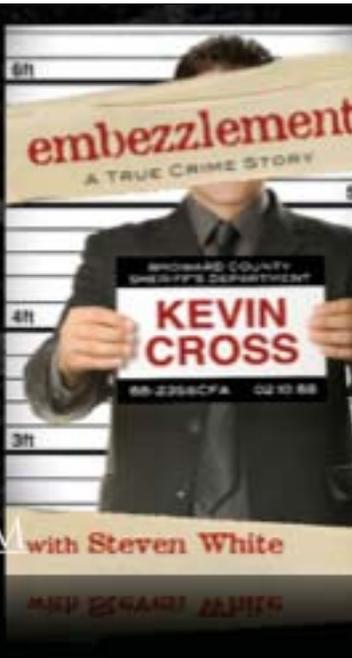
THANK YOU

TOP 7 CLUES

1. INCENTIVES
2. DUMP OLD ACCOUNTS
3. FRAUDSTERS LIKE FAKE BACKUP
4. PIGS GET FAT HOGS GET SLAUGHTERED
5. FRAUDSTERS ARE PATIENT
6. ARE YOU THE CIPHER?
7. SNEAKERS"







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embezzlement
A TRUE CRIME STORY

with **Steven White**

KEVIN CROSS

with Steven White

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"I renew because of the invaluable networking opportunities that being a member of the FICPA provides. From being involved with your local chapter to attending networking events, the FICPA is an organization that is known and respected across many industries."

Monica Ospina, CPA, ABV, CFF
Cherry, Bekaert & Holland, LLP
Coral Gables
Member since 2007



"I renew my FICPA membership because of the significant access to education, current events, and the networking it provides."

Ray Monteleone, CPA
President, Paladin Global Partners
Fort Lauderdale
Member since 1979



"I'm renewing my FICPA membership because it keeps me professionally and socially connected to my fellow peers in the profession."

David White, CPA
Carr Riggs & Ingram LLC
Tallahassee
Member since 2010



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