



Presented by:
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**Estate Planning Paralysis:
Getting Your Clients to Act**

November 2019



BNY MELLON
WEALTH MANAGEMENT

Agenda

Why Clients Don't Act

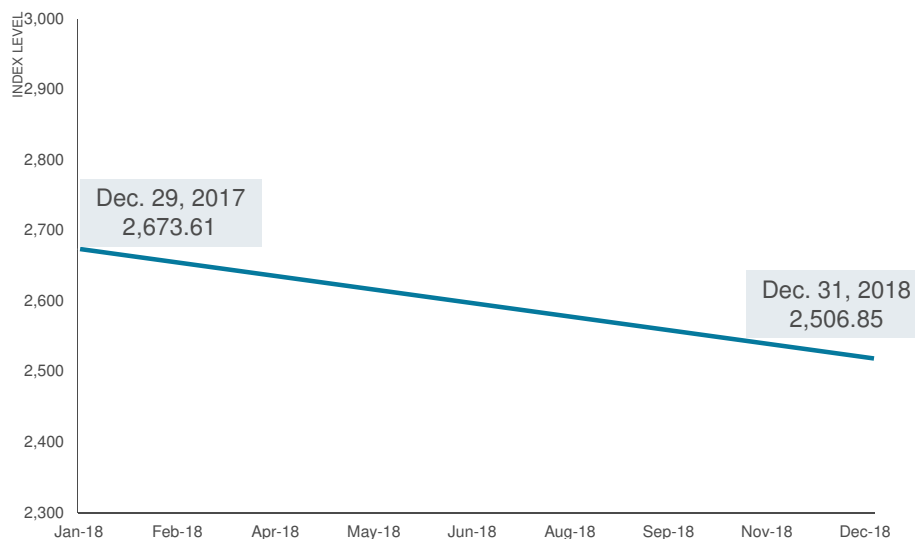
Overcoming Fear and Paralysis

1. Investigate
2. Communicate
3. Motivate

Summary

Frozen by Fear—Volatility

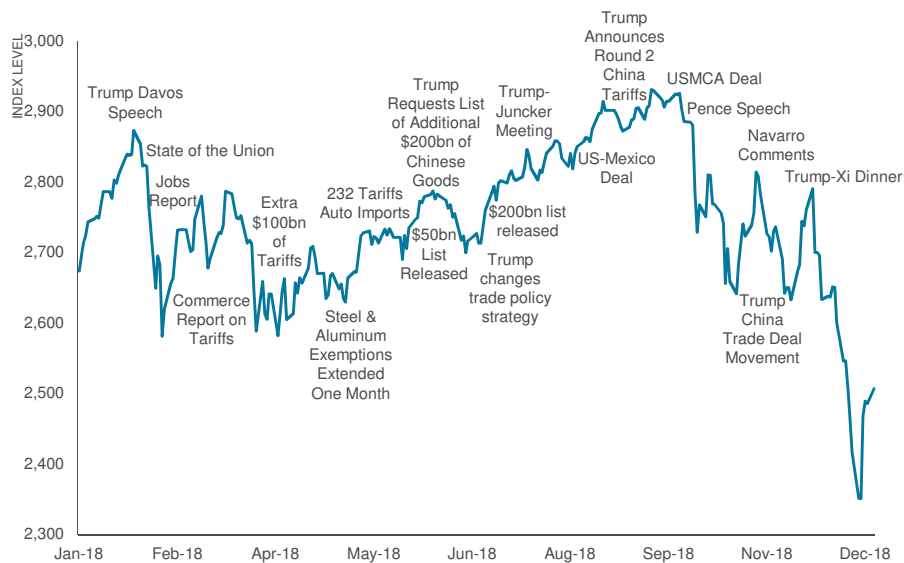
S&P 500 INDEX (STRAIGHT LINE)



³ As of 12/31/2018. Source: Strategas and BNY Mellon.

Frozen by Fear—Volatility

S&P 500 INDEX



⁴ As of 12/31/2018. Source: Strategas and BNY Mellon.

Frozen by Fear—Volatility

S&P 500 INDEX



5 As of 12/31/2018. Source: Strategas and BNY Mellon.

The Other Elephants in the Room

IT'S NOT JUST ABOUT VOLATILITY



6

A Jumble of Acronyms

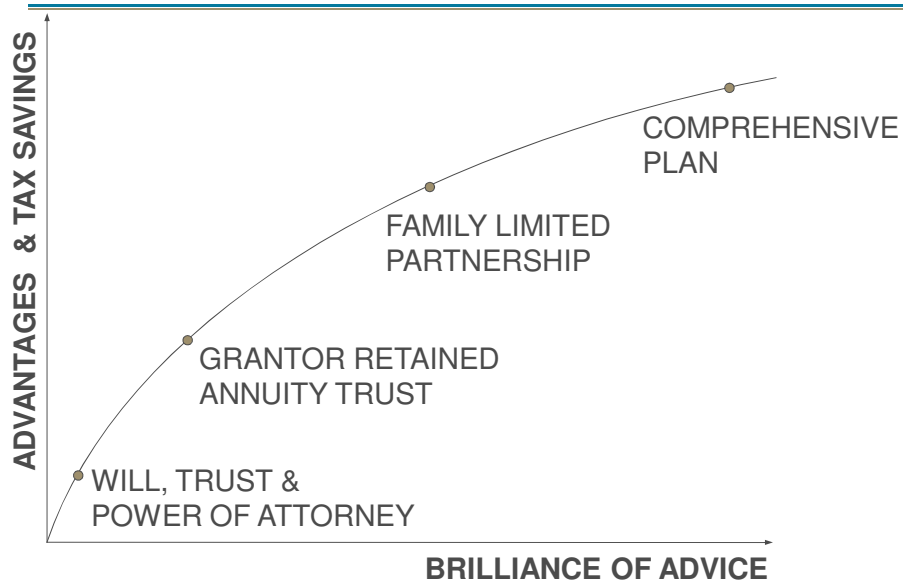
CLIENTS PARALYZED BY COMPLEXITY, EVEN IN BEST OF TIMES

ATRA *GRAT* TCJA QTIP IDIT
 DAF DING
 ILIT NING GRIT
 ROTH SEP FLLC IDGT
 POA CLUT IRA SCIN
 CRAT QPRT FLP CLAT
 DSUEA GST POD
 TRUIRJCA EGTRRA SLAT QDOT
 CRUT ESOP NIMCRUT

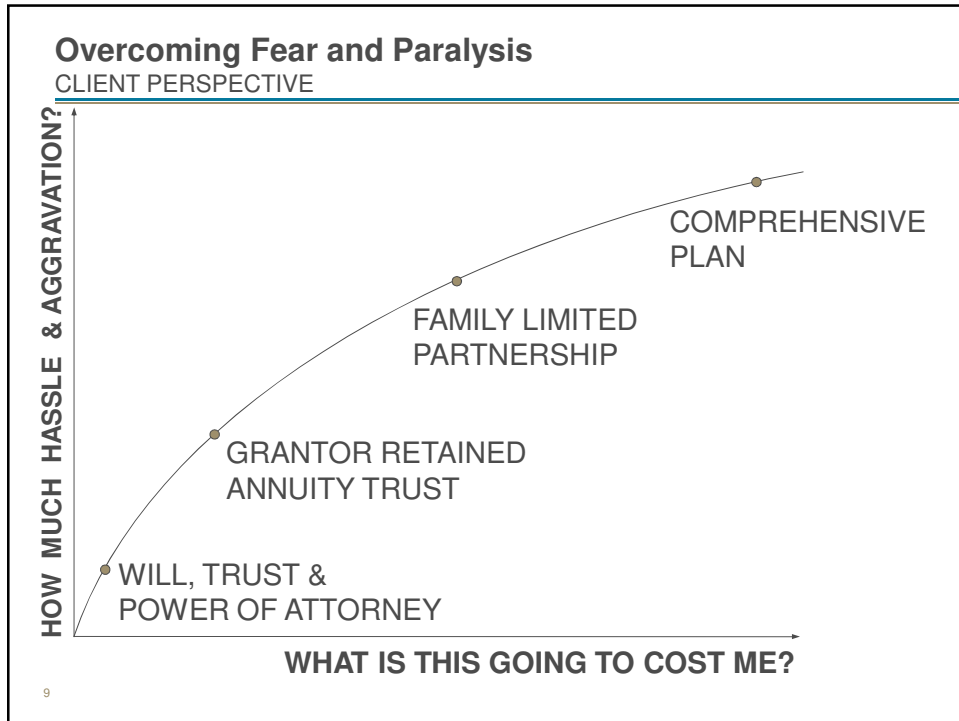
7

Overcoming Fear and Paralysis

ADVISOR PERSPECTIVE



8



Investigate

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InvestigateMIND OF THE CLIENT

11

InvestigateKEY QUESTIONS FOR UNCOVERING EXPLICIT NEEDS

If you were incapacitated, how would your wishes be met?

How have you taken advantage of low interest rates?

What have you done to ensure your assets pass tax-free to future generations?

In what ways have you documented your values and charitable goals?

What have you done to prepare your children to receive your wealth?

12

InvestigateDON'T JUMP TO SOLUTIONS

Scenario 1:

Advisor: How do you feel about your children serving together as successor co-trustees?

Client: I can already imagine them fighting over money.

Advisor: You need a corporate trustee.

13

InvestigateDON'T JUMP TO SOLUTIONS

Scenario 2:

Advisor: How do you feel about your children serving together as successor co-trustees?

Client: I can already imagine them fighting over money.

Advisor: What are your thoughts on naming an unrelated professional to help minimize the conflict?

Client: Yes, someone unbiased could help. But, my advisors will retire before then.

Advisor: A corporate co-trustee could make objective decisions and prevent disharmony.

14

Communicate



Communicate

STORYTELLING AND FLOWCHARTS

Stories

- Persuasive, compelling and memorable
- Elicit emotions, which lead to action

Pictures

- “Left brain” – mathematical, analytical (attorneys and CPAs)
- “Right brain” – visual, artistic (clients)

Sources: Stephens, G.J., Silbert, L.J., and Hasson, U., “Speaker-listener neural coupling underlies successful communication,” National Academy of Sciences (2010); Schank, R.C., and Abelson, R.P., “Knowledge and memory: The real story,” Advances in Social Cognition (1995); Sperry, R.W., “Hemisphere disconnection and unity in consciousness,” American Psychologist (1968); Nielsen, Jared A., Zielinski, Brandon A., Ferguson, Michael A., Lainhart, Janet E., and Anderson, Jeffrey S., “An Evaluation of the Left-Brain vs. Right-Brain Hypothesis with Resting State Functional Connectivity Magnetic Resonance Imaging,” PLOS ONE (2013).

Communicate—Behavioral Science and Economics

KEEP IT SIMPLE, STUPID (KISS) PRINCIPLE

“If you want to encourage someone to do something,
make it easy.”

—Richard H. Thaler

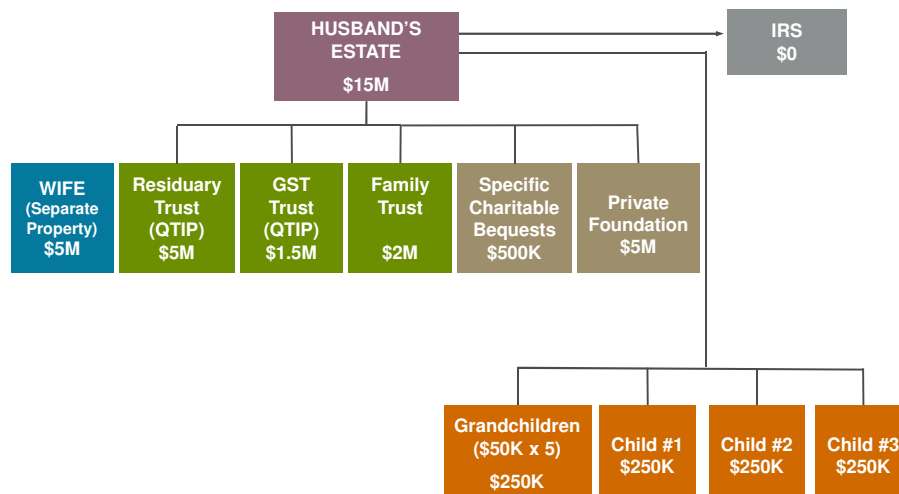
“[P]eople will eventually gravitate to the least demanding course.”

—Daniel Kahneman, Thinking, Fast and Slow

17

Communicate—Left Brain vs. Right Brain

A PICTURE IS WORTH A HUNDRED THOUSAND WORDS



18

Communicate

STORYTELLING AND FLOWCHARTS

Effective Planning Strategies

- Intra-Family Loan
- Family Limited Partnership (FLP) or Family LLC
- Grantor Retained Annuity Trust (GRAT)
- Intentionally Defective Grantor Trust (IDGT)
- Irrevocable Life Insurance Trust (ILIT)
- Charitable Remainder Unitrust (CRUT)
- Charitable Lead Annuity Trust (CLAT)
- Spousal Lifetime Access Trust (SLAT)

19

Communicate—Left Brain vs. Right Brain

DON'T JUST GIVE FACTS AND FIGURES

Grantor Retained Annuity Trust (GRAT)

- An irrevocable trust
- Wealth shifting vehicle allowed by statute that achieves two important objectives:
 - Provides grantor an annuity payment for a predetermined, limited time period
 - Appreciation in excess of § 7520 rate passes to beneficiaries when the trust term ends
- Purpose of a GRAT is to make a gift without incurring gift tax
 - The larger the value of the retained interest (i.e., the annuity) the smaller the taxable gift
- Transfer of the property to the GRAT is a taxable gift
 - Gift value is reduced by the present value of the annuity payments
- When the trust term ends, the remainder passes to beneficiaries with no additional transfer tax
- Key to success of a GRAT
 - Investment performance must exceed the § 7520 rate (2.0% in Nov. 2019)
 - Grantor must survive GRAT term or assets are includible in grantor's taxable estate

20

Communicate—Left Brain vs. Right Brain

DON'T JUST GIVE FACTS AND FIGURES

Type of Calculation:	Term
Transfer Date:	11/2019
\$7520 Rate:	2.00%
Grantor's Age:	60
Income Earned by Trust:	0.00%
Term:	10
Total Number of Payments:	10
Annual Growth of Principal:	7.00%
Pre-discounted FMV:	\$5,000,000
Discounted FMV:	\$5,000,000
Percentage Payout:	11.13263%
Exhaustion Method:	IRS
Payment Period:	Annual
Payment Timing:	End
Distribute Principal in Kind:	No
Vary Annuity Payments?	No
Is Transfer To or For the Benefit of a Member of the Transferor's Family?	Yes
Is Interest in Trust Retained by Transferor or Applicable Family Member?	Yes
With Reversion?	No

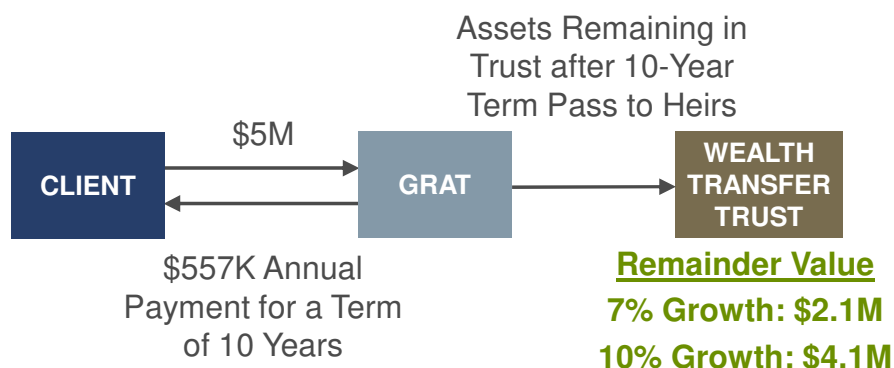
*** \$2702 IS APPLICABLE ***

Base Term Certain Annuity Factor:	8.9826
Frequency Adjustment Factor:	1.0000
Annual Annuity Payout:	\$556,631.50
Initial Amount of Payment Per Period:	\$556,631.50
Value of Term Certain Annuity Interest:	\$4,999,998.11
Value of Grantor's Retained Interest:	\$4,999,998.11
(1) Taxable Gift (Based on Term Interest):	\$1.89

Year	Beginning Principal	Economic Schedule		Required Payments	Remainder
		7.00% Growth	0.00% Annual Income		
1	\$5,000,000.00	\$350,000.00	\$0.00	\$556,631.50	\$4,793,368.50
2	\$4,793,368.50	\$335,535.80	\$0.00	\$556,631.50	\$4,572,272.80
3	\$4,572,272.80	\$320,059.10	\$0.00	\$556,631.50	\$4,335,700.40
4	\$4,335,700.40	\$303,499.03	\$0.00	\$556,631.50	\$4,082,567.93
5	\$4,082,567.93	\$285,779.76	\$0.00	\$556,631.50	\$3,811,716.19
6	\$3,811,716.19	\$266,820.13	\$0.00	\$556,631.50	\$3,521,904.82
7	\$3,521,904.82	\$246,533.34	\$0.00	\$556,631.50	\$3,211,806.66
8	\$3,211,806.66	\$224,826.47	\$0.00	\$556,631.50	\$2,880,001.63
9	\$2,880,001.63	\$201,600.11	\$0.00	\$556,631.50	\$2,524,970.24
10	\$2,524,970.24	\$176,747.92	\$0.00	\$556,631.50	\$2,145,086.66
Summary	\$5,000,000.00	\$2,711,401.66	\$0.00	\$5,566,315.00	\$2,145,086.66

21

Grantor Retained Annuity Trust (GRAT)



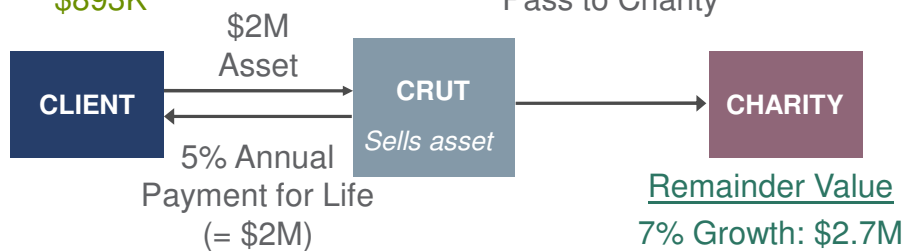
Assumes IRC section 7520 rate of 2.0% for November 2019. Rev. Rul. 2019-25.

22

Charitable Remainder Unitrusts (CRUTs)

Charitable Income
Tax Deduction:
\$893K

Assets Remaining in
Trust After Death
Pass to Charity

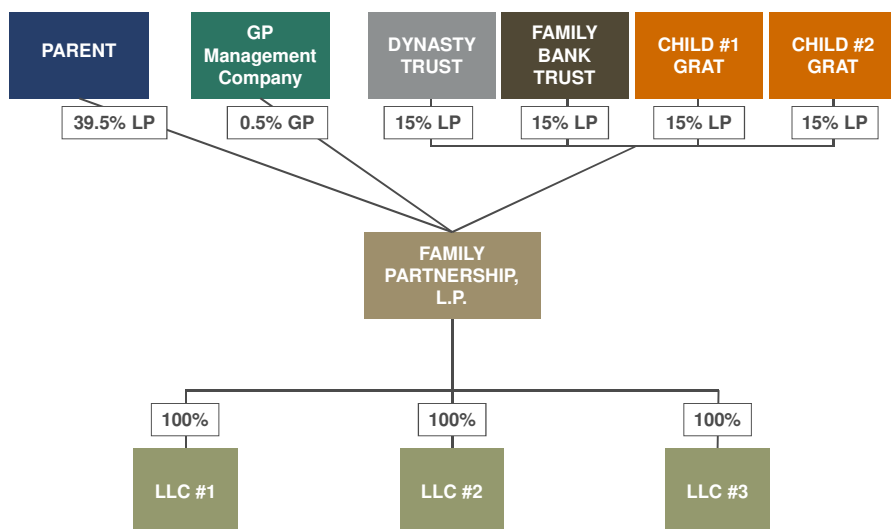


Assumes 7% return (4.2% growth and 2.8% income), 65-year-old donor, and most favorable IRC § 7520 rate of 2.2% for most recent three months as of November 2019. Rev. Rul. 2019-20.

23

Communicate—Left Brain vs. Right Brain

A PICTURE IS WORTH A MILLION WORDS



24

Motivate



Motivate—Why Clients Need to Act Now

LIMITED EXCEPTION WITH FEAR OF DEATH

The Three D's

- Death (Relative or Friend)
- Divorce
- Deal

About to Undergo Surgery

About to Leave on a Big Trip

Motivate—Why Clients Need to Act Now

RISK OF DISABILITY AND INCAPACITY FOR OLDER ADULTS

80%	Suffer from diabetes, arthritis, hypertension, heart disease, lung disease, cancer and/or other chronic condition
67%	Need help with eating, dressing, bathing and walking every day
10%	Are victims of elder abuse each year

Sources: Centers for Disease Control and Prevention (CDC), National Center for Health Statistics (2013); Johns Hopkins Bloomberg School of Public Health, "Analysis of Medical Expenditure Panel Survey" (2005); Johns Hopkins University Bloomberg School of Public Health, Westat and the National Institute on Aging, "National Health and Aging Trends Study" (2011); National Council on Aging (2014); Lifespan of Greater Rochester, Inc., Weill Cornell Medical Center of Cornell University and New York City Department for the Aging, "Under the Radar: New York State Elder Abuse Prevalence Study," (2011); Acienro R, Hernandez, Amstadter AB, Resnick HS, Steve K, Muzzy W, et al., "Prevalence and correlates of emotional, physical, sexual, and financial abuse and potential neglect in the United States: The national elder mistreatment study," American Journal of Public (2010); National Research Council, "Elder mistreatment: Abuse, neglect and exploitation in an aging America. Washington, D.C.," The National Academies Press (2003); National Center on Elder Abuse, "The national elder abuse incidence study" Washington D.C. (1998).

27

Motivate—Why Clients Need to Act Now

RISK OF DISABILITY AND INCAPACITY FOR ANYONE

National Car Accident Statistics

- Approximately 6.1 million car accidents in the U.S. per year
 - 32,675 were fatal
 - 2.34 million people were injured (both vehicle occupants and pedestrians)—more than
 - 6,400 injured per day
 - 4 injured per minute

Source: "2014 Motor Vehicle Crashes," U.S. Department of Transportation, National Highway Traffic Safety Administration (Mar. 2016).

28

Motivate—Why Clients Need to Act Now

LOW RATES AND A HIGH EXEMPTION AMOUNT

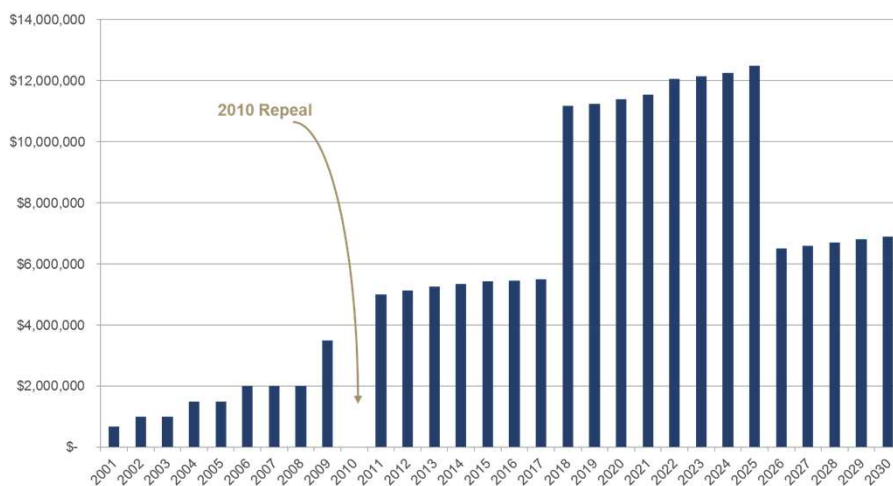
Historical § 7520 Rates



29 November 2019 rates. Rev. Rul. 2019-25.

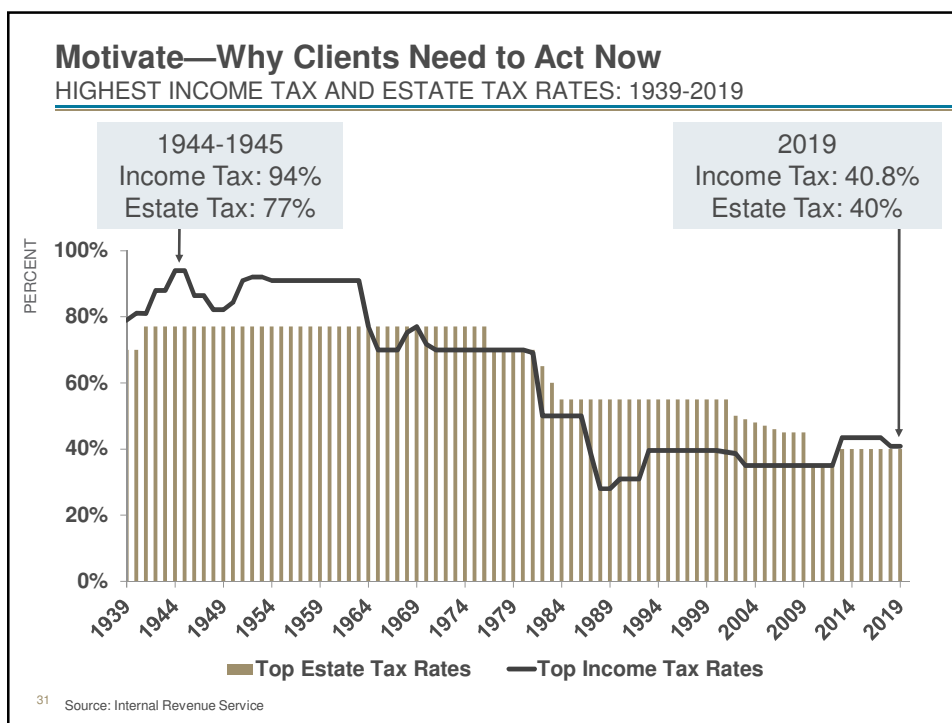
Motivate—Why Clients Need to Act Now

LOW RATES AND A HIGH EXEMPTION AMOUNT



The chained CPI tends to increase more slowly than the regular CPI. The exclusion amount is \$11,400,000 per person in 2019 (which is more than twice the previously announced exclusion amount of \$5,600,000 for 2018). Rev. Proc. 2017-58, 2018-18 and 2018-57.

30



Motivate—Why Clients Need to Act Now
SECONDARY SOURCE OF CONFIRMATION

Spouse

Attorneys/Accountants

Wealth Managers

32

What Can You Do to Get Clients to Act?

SUMMARY

Investigate: Critique the Questions You Regularly Ask Clients

- Are you uncovering their worries, anxieties and fears?
- Are you addressing their explicit needs?

Communicate: Analyze Your Materials and Communication Style

- Are you using charts and graphics to illustrate complex ideas?
- Are you using compelling stories to personalize planning concepts?

Motivate: Alert Your Clients to the Dangers of Not Acting Now

- Have you quantified the risks and cost of procrastination?
- Are you collaborating with your clients' other advisors?

33

THANK YOU!

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Biography

Justin T. Miller, J.D., LL.M., TEP, AEP®, CFP®
National Wealth Strategist

As a national wealth strategist and thought leader at BNY Mellon, Justin Miller works collaboratively with other advisors to provide comprehensive wealth planning advice to clients and their families. He also is an adjunct professor at Golden Gate University School of Law, a Fellow of the American College of Trust and Estate Counsel (ACTEC), and a sought-after speaker on tax, estate planning and family governance topics for leading conferences throughout the country, including the Hawaii Tax Institute, Kasner Estate Planning Symposium, Notre Dame Tax and Estate Planning Institute, UCLA/CEB Estate Planning Institute, USC Tax Institute, Southern Federal Tax Institute, and STEP Institute on Tax, Estate Planning and the Economy. In addition, he has published numerous articles in publications such as the *American Journal of Family Law*, *California Tax Lawyer*, *California Trusts and Estates Quarterly*, *Probate & Property*, *Real Property, Trust and Estate Law Journal*, *State Tax Notes*, *Tax Notes*, and *Trusts & Estates*, and he is frequently quoted as an industry expert in the media.

Mr. Miller has served as an executive committee member of the State Bar of California Taxation Section, an executive committee member of the Los Angeles County Bar Association Taxation Section, the chair of the Century City Bar Association Taxation Section, and the editor-in-chief of the *California Tax Lawyer*. Prior to joining BNY Mellon, he was an attorney at a major law firm, where he advised wealthy families, senior corporate executives and closely-held business owners regarding tax-efficient estate and business succession planning, trust law and management and asset preservation.

Mr. Miller received a master of laws in taxation and a juris doctor from New York University School of Law and a bachelor's degree, with honors, from the University of California at Berkeley.

35

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36