

THE FUTURE OF ESTATE PLANNING: THE MULTIGENERATIONAL LIFE PLAN

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I. INTRODUCTION

Our lives and technology are changing faster than ever. Unfortunately, our estate plans are not keeping up with technology and other changes in the world. Recently while in London, I saw something that has almost completely disappeared from the United States. Who would have thought that a telephone booth would be obsolete during our lifetime? Can you picture the red phone booth from London? They used to be on every corner in the city. The tools and resources that estate planners and their clients have relied on for hundreds of years have become obsolete because of technology. Yes, technology has created automatic drafting systems which have enabled the traditional estate planner to only deal with the issues and options coded into the software. It is not that these documents will not work, but they are behind the times and do not deal with many issues in our rapidly changing lives. Advancements in technology should be used to create better solutions and not just solutions that are easier. Over the past few years, we have recognized several areas that traditional estate planning documents ignore. The goal of this article is to inform you of those areas that may not have been addressed or asked about during your estate planning process so that you can address them properly or help you to understand if the documents you are contemplating will accurately reflect the goals and objectives of you and your family.

Traditionally, an estate plan focused more on death than protecting and creating flexibility for your assets during life.¹ We propose that traditional estate planning is only a small subset of a life plan, and every estate plan should be designed to deal with multigenerational issues and asset protection. Six areas exist that are often forgotten but need to be discussed when creating a life plan.

A. Firearms

Does your estate planner know you have a gun? Did he or she ask? Does your estate planner own firearms? If your attorney never asked, there is no way they could have dealt with the situations that could occur with the improper transfer or possession of a firearm by your personal representative, executor, or beneficiary. Serious harm could come to those involved in the process because of the lack of attention to these assets, which are found in 40–45% of all homes in the United States.²

1. See *Get Ahead of Your Estate Planning*, CNN MONEY, <http://money.cnn.com/magazines/moneymag/money101/lesson21/index.htm> (last updated July 26, 2012).

2. James D. Agresti & Reid K. Smith, *Gun Control Facts*, JUST FACTS (Sept. 13, 2010), <http://justfacts.com/guncontrol.asp>.

B. Digital Assets

Seventy-nine percent of people in North America use the Internet.³ Do you use the Internet, email, Facebook, Twitter, iTunes, or one of the many online app stores? Did your estate planner ask about your Internet usage? Have you noticed that your password requirements have become increasingly more complex over the past few years? It is hard enough to keep up with all of these accounts and login requirements during your life; imagine if you could not tell someone how to access or reset a password. A Digital Asset Protection Trust (DAPTM Trust) will deal with these issues during your life so that in the event of incapacity and upon death, the life of your family is not interrupted or harmed because of the failure to plan completely.⁴

C. Asset Protection

Historically, only the extremely wealthy could afford the cost of asset protection; these complicated international plans could cost tens of thousands of dollars to create and thousands more each year to manage.⁵ Has your estate planner discussed the benefits of asset protection? We have developed a new type of Asset Protection Trust that is affordable and usable by those who could not previously justify the expense and complexity of previous solutions—the Irrevocable Grantor Asset Protection Trust (IGAPTM).⁶ Best of all, the IGAPTM Trust has no annual fees associated with the management of the trust. Now individuals can protect their assets from unexpected issues such as divorce, car accidents, professional liability, bankruptcy, or other investor or owner liability.⁷ We all know of people who lost fortunes (small or large) over the last decade.⁸ These types of events do happen and will happen in the future. Have you protected your family's assets from the reach of predators wanting to cause harm?

3. *Internet Usage Statistics*, INTERNET WORLD STATS (Dec. 31, 2011), www.internetworldstats.com/stats.htm.

4. *DAP Trust—Digital Asset Trust*, APPLE L. FIRM PLLC, <http://www.jacksonvillelawyer.pro/lawyer-attorney-1610564.html> (last visited Nov. 6, 2012).

5. *See Why You Need Asset Protection*, TRUSTMAKERS, <http://www.trustmakers.com/Education-Self-Help/why-you-need-asset-protection.php> (last visited Nov. 6, 2012).

6. The IGAP Trust is a newly created trust by Author.

7. *See Using a Trust to Protect Assets*, ASSET PROTECTION CONSULTING GROUP, <http://www.apcg.net/TrustAssetProtect.htm> (last visited Nov. 6, 2012).

8. *Top 10 Chilling Statistics of the US Economy*, APPLICANT (Feb. 17, 2009), <http://applicant.com/top-10-chilling-statistics-of-the-us-economy/>.

D. Life Planning

Estate plans should include more about you and your life because people are living longer than before.⁹ Unfortunately, not all of the extra years of life are as productive as the ones before, and we may find that we need the ability to communicate our likes and dislikes to others to make decisions for us.¹⁰ While many estate plans deal with granting broad powers over financial and healthcare decisions, many ignore issues that directly relate to the quality of our life such as what we like to eat, what we like to read, music we like to hear, activities we like to participate in, and who we like to visit with. As we get older, fewer and fewer of our family members have an idea what we like, and less know what we dislike or would rather not do if given the choice.¹¹ Much of our lives involve a series of compromises with our spouses. If your spouse were not there, would you still want to do the things you only participated in because it made him or her happy? Not only should your plan include this information on you and your spouse or partner but you must also know how to deal with these issues for your parents, as they are not likely to consider it important.

E. Controlling from the Grave

It is your money and you have the right to spend it as you want. Most estate planning lawyers say controlling from the grave cannot or should not be done. While traditional laws often prevented us from creating documents that allowed us to control assets beyond a certain date, the modern trend is to allow one to create documents that allow control of assets for longer periods of time.¹² This type of multigenerational trust is easy to create with today's advances in technology and changes in the laws of many jurisdictions. If your state has a short or traditional Rule Against Perpetuities (RAP) that is not long enough for you, you can create your plan and select a state that has a longer RAP such as Florida, Arizona, Missouri, or Pennsylvania.¹³

9. *People Are Living Longer and Healthier: Now What?*, SCI. DAILY (Mar. 24, 2010), <http://www.sciencedaily.com/releases/2010/03/100324142121.htm>.

10. *Id.*

11. See *Estate Planning*, HARRIS & PLOTTEL, LLP, <http://harrisandplottel.com/services/estate-planning/> (last visited Oct. 23, 2012).

12. *Rules Against Perpetuities: Modern Trend*, THISMATTER.COM, thismatter.com/money/wills-estates-trusts/rule-against-perpetuities-modern-trend.htm (last visited Oct. 23, 2012).

13. See Elizabeth M. Schurig & Amy P. Jetel, *Summary of State Rule Against Perpetuities Laws*, GIORDANI, SCHURIG, BECKETT & TACKETT, L.L.P., 1–5 (2011), <http://www.okhouse.gov/Documents/InterimStudies/2011/11-010%20presentation%20c.pdf>.

F. Pets

Whether we like it or not, states considers our pets personal property, like a car or television.¹⁴ The legal system is not prepared to make quick decisions to feed or care for a pet.¹⁵ If you died with a child, the state would make sure your child was cared for, fed, and received medical attention. Many states have created pet trust statutes that allow some limited protections for pets; however, sometimes these statutes do not go far enough or act quickly enough to help take care of pets properly.¹⁶ While a pet trust is a good idea, often a traditional trust with pet provisions offers greater flexibility to protect and care for those pets that have become part of the family.¹⁷ Knowing more about your personal situation can allow a proper plan to address your needs.

G. Six Important Points

Forgetting the above-mentioned six important points when planning your estate can lead to much heartache and worry for the ones you love most. Times are changing, laws are changing, people and pets live longer than ever before, and the Internet is gaining popularity by the day. It is time to start planning with these changes in mind. It is important to be prepared for the worst and stop hoping for the best.

II. FIREARM COLLECTIONS

Many people have had a mysterious connection with firearms ever since putting their hands on their first rifle. I can remember the first time my father took me shooting and even what the target was. That was forty years ago. Like many others, I started a firearm collection that I share with my son. We both enjoy and cherish this collection, and eventually I would like to pass it on to my son and his family. Without the proper planning, that may not be possible.

14. See *Harabes v. Barker, Inc.*, 791 A.2d 1142, 1144 (N.J. Super. Ct. Ch. Div. 2001) (noting that a review of decisions from multiple states revealed that pets are personal property).

15. *Providing for Your Pet's Future Without You*, HUMANE SOC'Y U.S. 3-4 (Mar. 5, 2010), www.humanesociety.org/animals/resources/tips/providing_for_pets_future_without_you.html.

16. *Id.* at 4.

17. See *Providing for Your Pet in the Event of Your Death or Hospitalization*, N.Y. CITY B. ASS'N, <http://www.nycbar.org/media-aamp-publications/brochuresbooks/providing-for-your-pets-in-the-event-of-your-death-or-hospitalization> (last visited Oct. 23, 2012). See also David S. Favre, *Pet Trusts and Other Estate Issues*, ANIMAL LEGAL & HIST. CENTER (2003), http://www.animallaw.info/articles/ovus_willstrusts.htm.

A. The Family Heirloom

Americans love guns. The Second Amendment to the Constitution grants the right to own firearms.¹⁸ Over time the government, both federal and state, has chipped away at those rights and in some cases even tried to eliminate our rights to firearms.¹⁹ Every war in the United States of America was fought with a gun. Fathers pass their guns down to their sons. Over the last generation, firearm ownership rights and restrictions have become increasingly complex.²⁰ Many laws exist to deal with different classifications of firearms and who may have access to use, possess, and purchase them.²¹ Traditional estate planning has not kept up with the changes in legal requirements relating to firearms over the last generation. A 2006 poll reported that 43% of Americans keep a gun in their home.²² Today, with more guns than people in the United States, firearms can represent a significant family asset.²³ Some use firearms for investments, some for hunting, some for home protection, and some to pass down from generation to generation, carrying with it a piece of family history. The point is, firearms are unique and valuable chattels that people do not want to treat the same as their bank accounts, televisions, or vehicles. They have sentimental value and are generally preserved at the expense of other assets, while at the same time are subject to unique state and federal regulations.

B. Firearm Forfeiture

Surprisingly, many innocent Americans are forced to forfeit a deceased family member's firearm through no criminal fault of their own or of their family member. The federal law on this topic is long, exhaustive, confusing, and, most notably, strict.²⁴ Firearm regulations are too extensive to cover in this article; however, some basics are necessary to understand the importance of providing a plan for your firearms. The National

18. See generally *District of Columbia v. Heller*, 554 U.S. 570 (2008).

19. See generally *id.* (overturning a District of Columbia law prohibiting the registration of handguns).

20. See John Gettings, *Milestones in Federal Gun Control Legislation*, INFOPLEASE.COM, <http://www.infoplease.com/spot/guntime1.html> (last visited Jan. 11, 2013).

21. See, e.g., 26 U.S.C. § 5861 (prohibiting possession and actions concerning certain firearms).

22. Frank Newport, *Americans by Slight Margin Say Gun in the Home Makes It Safer*, GALLUP (Oct. 20, 2006), <http://www.gallup.com/poll/25090/americans-slight-margin-say-gun-home-makes-safer.aspx>.

23. See Michael Bloomberg, *NYC Mayor, Reacts to Colorado Shooting*, HUFFINGTON POST (July 20, 2012, 2:20 PM), http://www.huffingtonpost.com/2012/07/20/Michael-bloomberg-nyc-mayor-reacts-colorado-shooting_n_1689211.html.

24. See Peter J. Reilly, *Gun Collections Pose Special Estate Problems*, FORBES.COM (Sept. 22, 2011, 9:45 PM), <http://www.forbes.com/sites/peterjreilly/2011/09/22/gun-collections-pose-special-estate-problems/>.

Firearms Act (NFA) classifies three main types of firearms: Title I firearms, Title II firearms, and Antique firearms.²⁵

Title II firearms are the most regulated by state and federal law and include machine guns, short-barreled shotguns and rifles, silencers, and more.²⁶ Under federal law, Title II weapons must be forfeited to law enforcement if they are not properly registered.²⁷ Upon death or incapacity of the owner, the executor of the estate must undergo a long and tedious process while attempting to transfer these firearms, sometimes resulting in forfeiture of the firearms.²⁸ Only the owner of a Title II firearm is allowed to possess the firearm.²⁹ All others, including family and friends, are not allowed to be in possession—including constructive possession—of the firearm.³⁰ Constructive possession can occur without intent or knowledge of either party; all constructive possession requires is access to the firearm.³¹ There are also restrictions on age, crossing state lines, transferring the firearm, and more.³² Failure to comply with NFA regulations can result in ten years of incarceration, \$250,000 in fines, and forfeiture of the weapon and any “aircraft, vehicle, or vessel.”³³

As if the current firearm laws are not already strict enough, legislation continues to add more firearm restrictions.³⁴ Many Americans fear that registration of firearms could cause them to lose their firearms to government seizure and confiscation. Failure to properly plan may result in just that. Government agencies like the BATFE are waiting to confiscate and destroy your firearm.³⁵

25. I.R.C. §§ 5801–72 (1996).

26. I.R.C. § 5845 (2006).

27. I.R.C. §§ 5841, 5872 (2006).

28. See Gerry W. Beyer & Jessica B. Jackson, *What Estate Planners Need to Know About Firearms*, EST. PLAN. DEV. FOR TEX. PROF., 2 (Apr. 2010), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1586524.

29. David Goldman, *NFA Criminal Conduct*, NFA GUN TR. LAW. BLOG (Aug. 13, 2008), <http://www.guntrustlawyer.com/criminal-penalties/>.

30. See Beyer, *supra* note 28, at 2.

31. See *id.*

32. See *id.*

33. I.R.C. § 5861(d), (j) (West 2006); I.R.C. § 5872 (West 2006); 49 U.S.C.A. §§ 781–88 (West 2007).

34. See, e.g., Stop Online Ammunition Sales Act of 2012, H.R. 3458, 112th Cong. § 2 (2012) (proposing ban on online ammunition sales and requiring face to face ammunition sales).

35. See generally Robert Farago, *Newly Empowered BAFTE Throws Firearms Industry Into Turmoil with New Gun Transfer Rule*, TRUTH ABOUT GUNS (June 3, 2010), <http://www.thetruthaboutguns.com/2010/06/robert-farago/newly-empowered-bafte-throws-firearms-industry-into-turmoil-with-new-gun-transfer-rule/> (making any bone fide business shipment of firearms a “transfer” under the Gun Control Act of 1968).

C. How to Keep the “Gun Safe” Safe

When people think of estate planning, firearms are generally not on their minds. Some professionals are unaware that such strict regulations exist or that you should include firearms into your estate plan. The Gun Trust is growing in popularity among gun owners and professional estate planners as more people begin to recognize the benefits provided by Gun Trusts.³⁶

The Gun Trust is a powerful tool in estate planning that uses the basic underlying principles of trust formation.³⁷ The process of creating a Gun Trust involves discussing the client's objectives, determining how their family makeup will influence the structure of the trust, and trying to limit future legislative and transfer tax risks associated with Title II firearm ownership.³⁸ The trust is a language-specific trust that holds firearms for the benefit of the beneficiary while giving possessory and use rights to the trustees.³⁹ When creating a Gun Trust, it is important to think about what you would like to happen to the firearm, who you would like to own the firearm, and what alternatives you have.

The benefits provided by the trust are only possible due to the strict regulations on firearms.⁴⁰ If the strict regulations were not present, we would not need a Gun Trust.⁴¹ The trust helps in purchasing certain firearms, allows for multiple users of the firearms, and gives instructions on how to handle the firearms to prevent breaking the law.⁴² Most of all, upon death or incapacity, the Gun Trust allows your loved ones to keep your firearms.⁴³ This prevents the heartache and hassle associated with firearms that are not in a Gun Trust.⁴⁴

Firearm owners are careful and will not just hand a gun to anyone. Why should this change upon death? Your Gun Trust Lawyer® can create a trust that provides others with the ability to make decisions regarding the disposition of your firearms while adhering to the values and thought processes you have. Your beneficiary may be prohibited from possessing

36. Patrick Stegall, *An Overview of NFA Gun Trusts*, SILVER BEAR CAFE, <http://www.silverbearcafe.com/private/02.12/guntrusts.html> (last visited Dec. 13, 2012).

37. See David M. Goldman, *What is a NFA Trust or Gun Trust?*, NFA GUN TR. LAW. BLOG, (July 17, 2012, 11:35 AM), <http://www.guntrustlawyer.com/2012/07/what-is-an-nfa-trust-or-gun-tr.html>.

38. David M. Goldman, *What is a NFA Firearms Trust?*, NFA GUN TR. LAW. BLOG (Oct. 8, 2009, 10:11 AM), <http://www.guntrustlawyer.com/2009/10/what-is-a-nfa-firearms-trust.html>.

39. Goldman, *supra* note 37.

40. *Id.*

41. See *id.* (explaining that violation of NFA restrictions can result in confiscation and criminal liability).

42. *Id.*

43. David M. Goldman, *Why Do I Need a NFA Firearms Trust?*, NFA GUN TR. LAW. BLOG (Oct. 6, 2009, 3:15 PM), <http://www.guntrustlawyer.com/2009/10/why-do-i-need-an-nfa-firearms.html>.

44. See generally *id.* (explaining that ordinary trusts do not address NFA regulations and could lead to confiscation of these weapons).

firearms because of residency, mental stability, domestic violence issues, child abuse, or drug addiction.⁴⁵ A traditional estate plan that treats a gun like any other personal property would instruct your personal representative, spouse, friend, or family member to break the law by following the instructions in your will or traditional trust.⁴⁶ A trust holding certain firearms should be completely rewritten to deal with the unique issues of firearm ownership, transfer, use, and possession.

No one wants his or her firearms taken away by some government agency for remote and complex statutory restrictions. Firearms have special importance to anyone who owns one. A properly prepared Gun Trust can prevent forfeiture and heartache.⁴⁷

III. THE DIGITAL AGE

Many of us grew up without television, computers, and cell phones. These items were either non-existent or uncommon. Now, it seems that if you do not have two of the three items you are in the minority. Times change and so do people.

A. Technology Reaches All Age Groups

Type in “boomer statistic” on Google and hundreds of results will pop up that deal with anything from the number of existing baby boomers to what electronic devices they use.⁴⁸ Baby boomers constitute 26% of the United States population.⁴⁹ Since 2011, 78% of them are online spending an average of \$650 per month.⁵⁰ The electronics they use are noteworthy because originally boomers were not predicted to start using “new” technology, such as smartphones or Facebook.⁵¹ However, this did not last long, as baby boomers defied what it means to “get old.”⁵² Now, baby boomers spend more money on technology and spend more money online than any other demographic.⁵³ For example, 35% of people own a smartphone in the United States. Further, smartphones are owned by 30%

45. *See id.*

46. *See id.*

47. *See id.*

48. GOOGLE, <https://www.google.com/> (type “boomer statistic” in the search field and click “Google Search” for results).

49. Dan Barry, *Boomers Hit New Self-Absorption Milestone: Age 65*, N.Y. TIMES, Jan. 1, 2011, <http://www.nytimes.com/2011/01/01/us/01boomers.html>.

50. Leah Haynes, *The Digital Age of 55+ Targeted Media Has Arrived*, SPMG (Apr. 1, 2012), <http://spm360.com/2012/04/04/the-digital-age-of-55-targeted-media-has-arrived/>.

51. Jamie Carracher, *How Baby Boomers Are Embracing Digital Media*, MASHABLE SOC. MEDIA (Apr. 6, 2011), <http://mashable.com/2011/04/06/baby-boomers-digital-media/>.

52. *Id.*

53. *See Estate Planning in the 21st Century: New Considerations in a Changing Society*, BMO RETIREMENT INST. (Apr. 2012), www.bmo.com/retirementinstitute.

of the fifty-five to sixty-four-year-old demographic and 38% of those sixty-five or older.⁵⁴ In the United States, nearly 16 million people fifty-five and older are using Facebook, and this number is only expected to increase.⁵⁵ Websites such as Facebook and Twitter, or even a simple email account, now carry the family photos.⁵⁶ This is only expected to increase as environmental awareness is gaining baby boomers' attention, and the move from paper to paperless is only going to continue to grow.⁵⁷

Online shopping and online banking are increasing in popularity among the baby boomer generation.⁵⁸ It is obvious to see why hopping on the Internet is second nature. Many of us spend forty hours per week in front of a computer screen. Online banking has increased dramatically for people fifty-five and over.⁵⁹ In 2011, 57% of people ages fifty-five and over preferred online banking; however, only 20% did in 2010.⁶⁰ It is projected that “[o]nline shoppers in the United States will spend \$327 billion in 2016, up 62% from \$202 billion in 2011.”⁶¹ Online shopping and online banking is expected to increase among baby boomers.⁶²

The big difference between baby boomers and the technologically educated youth of today is that baby boomers have large bank balances.⁶³ They spend more money on technology than any other age group and even create their own businesses online.⁶⁴ All in all, technology is infiltrating the baby boomer generation; baby boomers are now investing their time and money into technology.⁶⁵

B. Your Digital Afterlife

The drawback to baby boomers investing their time, money, and memories into online sites and investment accounts is that there is no easy

54. Anson Alexander, *Smartphone Usage Statistics 2012*, ANSONALEX (Jan. 24, 2012), <http://ansonalex.com/infographics/smartphone-usage-statistics-2012-infographic/>.

55. See Carracher, *supra* note 51.

56. See Haynes, *supra* note 50.

57. See generally Carracher, *supra* note 51.

58. *Baby Boomers are the Biggest-Spending Online Shoppers*, IT'S IN THE STARS (Sept. 29, 2012, 12:11 PM), <http://itsinthestaronline.com/baby-boomers-are-the-biggest-online-shoppers/>; *ABA Survey: Popularity of Online Banking Explodes*, AM. BANKERS ASS'N (Sept. 29, 2012, 12:11 PM), <http://www.aba.com/press/pages/090811consumerpreferencessurvey.aspx>.

59. AM. BANKERS ASS'N, *supra* note 58.

60. *Id.*

61. Thad Rueter, *E-Retail Spending to Increase 62% by 2016*, INTERNET RETAILER (Feb. 27, 2012, 9:52 AM), <http://www.internetretailer.com/2012/02/27/e-retail-spending-increase-45-2016>.

62. IT'S IN THE STARS, *supra* note 58; AM. BANKERS ASS'N, *supra* note 58.

63. *50+ Fact & Fiction*, IMMERSION ACTIVE, <http://www.immersionactive.com/resources/50-plus-facts-and-fiction/> (last visited Oct. 23, 2012).

64. Beth Snyder Balik, *Boomers—Yes, Boomers—Spend the Most on Tech*, ADVERTISING AGE (Sept. 29, 2012, 12:32 PM), <http://adage.com/article/digital/consumer-electronics-baby-boomers-spend-tech/146391/>.

65. See Carracher, *supra* note 51.

way for others to access these sites in the event of death or incapacity.⁶⁶ Ask yourself the following question: What happens to my digital assets when I die or become incapacitated? In a recent survey, more than half of the respondents over age forty-five responded that it was important to make some type of estate plan for their personal and financial digital assets, yet 57% of the individuals who thought it was important did not include it in an estate plan because they “didn’t think of it.”⁶⁷ These statistics make sense; after all, these digital assets can be important assets in your estate.

The facts are simple: Times change and so do estate plans. With the constant increase in value and complexity of our digital assets, it is time to include digital assets in your estate plan. Be proactive in planning your estate. If you plan carefully and correctly, your family and friends will greatly appreciate it. Your family and friends will not need to go through long and expensive processes to have access to your digital assets. A traditional estate plan or will cannot protect these assets.

C. DAPTM Trust

The DAPTM Trust is a trust that is specifically designed to protect your digital assets upon your death or incapacity.⁶⁸ Some examples of digital assets that can be included in your DAPTM Trust are “email accounts, [blogs], social-networking websites, online backup services, photo and document sharing websites, financial and business accounts, domain names, virtual property, and computer files.”⁶⁹

The biggest problem with Digital Assets is that most digital assets are licenses that are non-transferable and expire upon death or short terms of inactivity. A DAPTM Trust . . . can manage these assets and allow those who you preselect to access them without violations of the licen[s]e terms and without potential liability to others who may claim an interest or claim to have been harmed by the improper access and use of information contained in these assets.⁷⁰

The DAPTM Trust is a relatively new trust, just like most of the “stuff” that goes in it. There are only a handful of professionals ready to help you with your digital needs.⁷¹ The DAPTM Trust provides the access and legal

66. See Carracher, *supra* note 51.

67. *Estate Planning in the 21st Century*, *supra* note 53.

68. See *DAP Trust*, *supra* note 4, at 1.

69. *Free Digital Asset Trust*, ROCKET LAWYER, <http://www.rocketlawyer.com/document/digital-asset-trust.rl> (last visited Nov. 7, 2012).

70. *DAP Trust*, *supra* note 4, at 1–2.

71. David Goldman, *Who Owns Your iTunes Account? And Bruce Willis*, FLA. EST. PLAN. LAW. BLOG (Sept. 4, 2012, 11:03 AM), <http://www.floridaestateplanninglawyerblog.com/2012/09/who-ownes-your-itunes-account-and-bruce-willis.html>.

right to manage your digital assets during your life. After you die, this access will help your attorney manage and create your beneficiary designations by using specific legal documents and trust software.⁷² Do not create confusion and the accompanying financial burden that can come with lack of properly planning the transition of your digital assets. Remember, failure to protect these assets will cause many of your assets to expire, and your beneficiaries will have no legal right to access them upon your death.

IV. PROTECTING YOUR ASSETS

Why have assets if you let others take them away? Do not let creditors end up with them because they can. You worked hard for your assets. Let your attorney protect your hard-earned belongings. It is your stuff, not theirs. Keep it.

A. Asset Protection Trusts Apply to Everyone

No matter how many assets a person has, protecting your assets is always a primary concern. Why do people risk losing their assets to creditors and predators? The reason is that most people do not know how to properly protect their assets. Asset protection trusts like the IGAP™ Asset Protection Trust have become affordable and easy enough for the average person to manage.⁷³

Many different techniques are available to protect assets.⁷⁴ Some are based on the style of ownership.⁷⁵ While many feel that co-ownership techniques are appropriate, they typically only work when you and your spouse are both alive and married.⁷⁶ Divorce or death could end the protection and subject the claims to past or present creditors.⁷⁷ Additionally, overseas asset protection techniques can be expensive and complex to manage and protections can vary greatly, depending on the type and location of property or assets to be protected.⁷⁸

72. David Goldman, *Dap Trust: Dealing with Your Digital/Online Rights and Propert Correctly*, FLA. EST. PLAN. LAW. BLOG (July 28, 2011, 9:18 PM), <http://www.floridaestateplanninglawyerblog.com/2011/07/dap-trust-dealing-with-your-digital-online-rights-and-propert-correctly.html>.

73. Quentin Fattrell, *Who Inherits Your iTunes Library?*, MARKETWATCH (Aug. 23, 2012), <http://articles.marketwatch.com/2012-08-23/finance/33336852-1-digital-content-digital-file-apple-and-amazon>.

74. Jon Alper, *Tenants By the Entireties*, ALPER LAW, <http://www.alperlaw.com/asset-protection/florida-asset-protection/tenants-by-entireties/> (last visited Oct. 18, 2012).

75. *Id.*

76. *Id.*

77. *Id.*

78. See *Asset Protection Trusts*, TRUSTMAKERS, <http://www.trustmakers.com/Domestic-Services/Asset-Protection-Planning/What-Is-A-Trust/asset-protection-trust.php> (last visited Oct. 18, 2012).

B. How IGAPTM Asset Protection Trusts Work

An IGAPTM Asset Protection Trust can serve multiple purposes such as discouraging litigation, keeping your ownership of assets confidential, providing an alternative to a prenuptial agreement, and protecting assets from disqualification for government benefits.⁷⁹

IGAPTM Trusts make it more difficult, if not impossible, for a creditor to reach assets held by the trust.⁸⁰ By implementing a properly crafted IGAPTM Trust, individuals can legitimately put a significant portion of their assets out of the reach of creditors and still retain substantial control over these protected assets.⁸¹ A properly implemented IGAPTM Trust reduces the size of the target your future creditors and predators can reach. The creditors' motivation fades once they are convinced that any judgment will be difficult or impossible to collect. The effect of IGAPTM Asset Protection planning is the destruction of the economic incentive to litigate. Creditors' attorneys will also lose motivation when they realize they cannot reach the assets. Often, their motivation is a result of a contingency fee arrangement and while 40% of recovery may be attractive, 40% of \$0 is \$0.⁸²

Do not risk losing your hard-earned assets to creditors and predators. The IGAPTM Trust will not only benefit you, but it will also benefit your children by allowing the assets to pass to them without creditors reaching the assets, avoiding high probate costs while allowing individuals to take advantage of simplified pass-through accounting and receive a stepped-up basis on appreciated assets.⁸³

V. THE LIFE PLAN

What is a life plan and how does it work? You may be telling yourself that you already have a life plan and do not need some attorney's plan. Your life plan is probably what you have planned for you and your family's future if everything goes according to plan. Basically, it is your perfect little world and your perfect little future. The sad part is that your life plan is not complete and does not consider everything. I hate to say it, but your perfect little world and your perfect little future will not always go according to plan.

79. See generally APPLE LAW FIRM PLLC, <http://www.jacksonvillelawyer.pro/> (last visited Oct. 1, 2012).

80. See generally *id.*

81. See generally *id.*

82. See generally *id.*

83. See generally *id.*

A. Anything Could Happen

A life plan should be a set of rules to run your life and another set of rules to use in the case of incapacity or death. The problem with many estate plans is that they are very detailed when it comes to death but in an effort to create maximum flexibility during life, they fail to provide concrete guidance. As long as you are healthy and can make decisions for yourself, no issue exists. The problems arise when you are unable to make decisions. The limited information provided in traditional estate planning gives flexibility for healthcare and financial needs but does not let anyone know our lifestyle preferences.⁸⁴ Some may say, “It does not matter because I will not know the difference anyway.”

Is this really what you want? After all, would you not like to be able to choose which activities you participate in, what you are fed, or the people you visit with? What could be worse than having to do something you hate, being fed something on a regular basis that you do not like, or visiting with someone you truly despise without the ability to tell anyone? Would you still want to participate in family or social activities if you were not presentable and a spectacle or burden on your family?

Many attorneys give their clients legal advice on scenarios of what could happen to them or their spouse and why they need a power of attorney or a health care directive in place; however, many clients ignore this legal advice and continue to live their lives on the edge of a disaster.⁸⁵ It is important to create and update a power of attorney and a health care directive. Failure to create these simple documents can prevent your family from having the ability to make decisions for you.⁸⁶ Even though the standard health care directive and power of attorney may be beneficial, the problem with them is that they often create powers that are not specific to your desires.⁸⁷ These are known as the old plans and can leave you and your family in a great deal of hardship.⁸⁸

B. Do Not Get Stuck with the Old Plans

The life plans that many attorneys use—power of attorney and health care directive—are good if you want the generic plan that takes care of your

84. See *Estate Planning in the 21st Century*, *supra* note 53.

85. See, e.g., Jeffrey A. Cramer, *Another Estate Planning Horror Story from the Real World*, CRAMER L. CENTER (July 12, 2012), <http://cramerlawcenter.com/uncategorized/another-estate-planning-horror-story-from-the-real-world/>.

86. Deborah L. Jacobs, *Sign a Healthcare Proxy, Living Will and Power of Attorney*, FORBES (Sept. 26, 2011, 11:25 AM), <http://www.forbes.com/sites/deborahljacobs/2011/09/26/sign-a-healthcare-proxy-living-will-and-power-of-attorney-2/>.

87. See Catherine Seal, *Power of Attorney: Convenient Contract or Dangerous Document?*, 11 MARQ. ELDER'S ADVISOR 307, 316–29 (2010).

88. See *id.*

finances and determines whether or not you would like to live or die under certain circumstances. They do not take anything else into consideration. Furthermore, taking care of your finances via power of attorney could amount to a spending spree for your son or daughter and is often referred to as giving someone “blank check authority.”⁸⁹ Some attorneys also make death plans, which deal with what happens to your belongings when you die. While death plans are very necessary and highly recommended, they do not help you take care of yourself while you are alive; therefore, they are not enough. Why not put yourself first? Have you realized how horrible your life could be if you do not make a plan for yourself?

It is important to realize what happens to the majority of Americans once they become unable to communicate. They cannot tell others what they despise or love anymore and can only participate in activities that others decided they would like. Imagine if you were in an accident and no longer able to communicate. Then imagine you cannot stand the “triple T’s”: your neighbor Tom, television shows like Barney, and tuna. Finally, imagine that your neighbor Tom spends at least forty hours a week watching Barney with you and his grandson while feeding you tuna fish. This is what we call a slow and painful death. Do not let this happen to you as a result of being stuck with one of the old plans. They will not help you in a “triple T” situation.

Even if it is not the things you dislike that worry you, it can be little things that you care about such as getting your hair done once a week or watching your favorite sports team. Then there are important things such as going to church every Sunday or going to visit your mother’s gravesite on her birthday. These types of things matter and perhaps the only person who knows to get you out of a hospital or nursing home to attend certain events or visit certain places is you. Why wait to die in a lonely room without being able to do the things you want? It is common sense and, with a new and improved life plan, you can change all this.

C. Your Own Life Plan

The new and improved life plan is your own personalized care plan that focuses on more than just life or death and financial matters.⁹⁰ Your own life plan is a set of instructions that will help your family, caregiver, and others understand your preferences about the way you want to live. Basically it is a plan of what you want to eat, where you want to go, what you want to do, and how often and under what circumstances you want to

89. Scott A. Makuakane, *Durable Power of Attorney: The Ultimate Blank Check*, HAW. EST. 8 PLAN. BLOG (May 5, 2012), <http://blog.est8planning.com/hawaii-estate-planning-blog/2012/05/durable-power-of-attorney-the-ultimate-blank-check.html>.

90. *See Life Plans*, COCHRAN FIRM, <http://www.cochranfirm.com/civil/life-plans.html> (last visited Dec. 13, 2012).

do things that enhance your life. After all, it is your money, and your plan should be designed to take care of you. When creating your life plan, you go through a long list of questions including whether or not you would like to be dressed daily; how often you would like your hair washed and cut; how often you would like to be taken outdoors and where; how often you would like to visit your family; whether or not you would like to be taken to public places and where; under what condition you would not like to go in public anymore; your religious preferences; how often you would like to attend church services; what food and beverages you like and dislike; what books, newspapers, and magazines you would like read to you and how often; what TV channel(s) you would like to watch; what hobbies you enjoy; and more.

If everyone lived their life to the fullest and then died immediately, a life plan would not be important. Too often, this is not the case. While modern medicine is allowing us to live longer than ever before, the quality of our life in the final stages is not always the same as earlier in life. A larger percentage of the population will spend time either mentally or physically incapacitated.⁹¹ A life plan will allow you to enjoy and participate in life.

VI. CONTROLLING FROM THE GRAVE

You may hear “controlling from the grave” and automatically think of some ghost story or scary movie. That is not correct one bit. Controlling from the grave is about what you want while you lie resting in your grave.⁹²

A. *What Is It and How Does It Work?*

Many people, especially older people, stay up at night thinking about what is going to happen with their assets when they are gone. Proper planning may relieve some of your anxiety by allowing you to control your assets after death. Controlling from the grave, also called dead hand control, is a type of control that many people would like to have after working so hard for their things.⁹³

You can control from the grave in many different ways.⁹⁴ One of the more popular ways involves making a trust with provisions allowing certain people to receive or use your things if they refrain from engaging in certain

91. See Mikaila Altenbern, *Rapidly Growing Population Living With Alzheimer's Disease*, HEALTH POL'Y SOLUTIONS (Mar. 23, 2011), <http://www.healthpolicysolutions.org/2011/03/23/living-with-alzheimers-disease/>.

92. See *Revocable Living Trusts*, GUERTIN & GUERTIN, LLC, http://www.guertinandguertin.com/revokable_trusts.php (last visited Dec. 13, 2012).

93. See *id.*

94. See *id.*

conduct or achieve certain goals you set for them (e.g., do not smoke, graduate from college, etc.).⁹⁵ If you do not set up the appropriate estate plan, you do not know what would happen with your assets when you are gone, how they would be used, and who would be using them. Controlling from the grave allows you to determine this in a set of instructions laid out in your trust.

B. Who Is Going to Get Your Stuff?

After thinking about it for a short time, determining who you want and who you do not want to inherit your assets becomes fairly easy. How about your son-in-law, James, who has a new investment opportunity just for you each month, bosses your daughter around, ignores your two grandchildren, has a number of female “friends,” and always inquires about your health?⁹⁶ Do you want him walking away with your money?⁹⁷ How about your husband’s next wife Elaine, who brought him six “home-cooked” meals in the weeks after your death?⁹⁸ She cannot wait to redecorate your home, and thinks there is no good reason that the money earmarked for your children should not be spent for more important things like jewelry, sports cars, and European spa vacations.⁹⁹ Do you want her spending your children’s inheritance?¹⁰⁰ How about your own son Frankie, who is thirty-five, still lives at home, stays up until 4:00 a.m., sleeps until noon, does not pay rent, expects you to do his laundry, works part time at the local video game store, and begins every sentence with the word “dude.”¹⁰¹ Even though he is your child, do you think he should do something with his life before he gets all of what you have saved?¹⁰² Controlling from the grave ensures that guys like Frankie do something with their lives before spending your money, that women like Elaine do not blow all your children’s inheritance on nonsense, or that guys like your son-in-law James do not break your daughters heart and leave her as a poor, single mother of two.¹⁰³

95. See Laura Saunders, *How to Control Your Heirs From the Grave*, WALL ST. J., Aug. 10, 2012, <http://online.wsj.com/article/SB10000872396390444900304577579020960854732.html>.

96. David M. Goldman, *Reasons to Make an Estate Plan*, FLA. EST. PLAN. LAW. BLOG (Aug. 10, 2012, 12:42 PM), <http://www.floridaestateplanninglawyerblog.com/2012/08/reasons-to-make-an-estate-plan.html>.

97. See *id.*

98. *Id.*

99. See *id.*

100. *Id.*

101. *Id.*

102. *Id.*

103. See *id.*

C. States Have Different Rules

One may only control from the grave for a certain amount of time, depending on the RAP of each state.¹⁰⁴ The RAP is a confusing concept for many attorneys.¹⁰⁵ The old common law rule states, “[P]roperty interest conveyed in a will [must] vest, if at all, within [twenty-one] years of the death of individuals already in existence at the time of the testators death also known as a ‘life in being plus [twenty-one] years.’”¹⁰⁶ Some states still follow this twenty-one-year rule, while other states, such as Florida, allow for more time.¹⁰⁷ By creating your trust in Florida, you can bypass the twenty-one-year rule still enforced in many states and are allowed to control your assets for 360 years.¹⁰⁸

D. Make Sure You Do Not Lose Control

Avoid losing your assets to people who do not deserve them, letting people spend or sell your assets carelessly, or having your assets used in a way you forbid. Also, allow yourself the option to make people work for your prized possessions by putting conditions in your trust. You worked too hard for your assets to be left in the hands of a careless person without proper protection or guidance.

VII. YOUR PET’S FUTURE

You plan for your future. You plan for your children’s future. You plan for your grandchildren’s future. Do you plan for your pet’s future? Is it fair that you consider your pet as a member of the family but forget to plan for his or her future?

A. Americans and Their Pets Today

People have many different kinds of pets: big or small, fat or skinny, male or female, mammal or non-mammal.¹⁰⁹ One thing these people have in common is unconditional love for their pets. Unconditional love can

104. See Schurig & Jetel, *supra* note 13.

105. See *Bizarre Provision in Lumber Baron’s Will Delay’s Estate Distribution for 92 Years*, MICH. ELDER L. & EST. PLAN. BLOG (June 21, 2011), <http://www.spraguelawfirm.com/elderlawblog/2011/06/bizarre-provision-in-lumber-baron%E2%80%99s-will-delays-estate-distribution-for-92-years/>.

106. *Id.* (alteration in original).

107. See Kelly Sheridan, *Benefits of Having a Florida Resident Trust*, CANANDAIGUA NAT’L TR. COMPANY (Mar. 15, 2011, 11:55 AM), http://www.cntrustcompany.com/Blog/Benefits_of_Having_a_Florida_Resident_Trust/.

108. FLA. STAT. § 689.225(f) (2012).

109. Frank Newport, *Americans and Their Pets*, GALLUP (Dec. 21, 2006), <http://www.gallup.com/poll/25969/americans-their-pets.aspx>.

mean multimillion-dollar celebrity pet trusts, such as Oprah Winfrey's \$30 million dollar pet trust for the care of her dogs.¹¹⁰ Many think that Oprah went a little overboard.¹¹¹ You do not have to be a millionaire to make sure your pets are taken care of when you are not able to care for them. Pet owners will continually do what is best for their pets, regardless of economic conditions. For example, in 1994 the total United States pet industry expenditures were about \$17 billion.¹¹² Even in 2011, during tough economic times, the total United States pet industry expenditures were over \$50 billion.¹¹³

About 62% of all United States households have at least one pet.¹¹⁴ "Thirty-nine percent of [United States] households own at least one dog" and "[t]hirty-three percent of [United States] households own at least one cat."¹¹⁵ Cat owners spend over \$1,200 per year and dog owners spend over \$1,600 per year on basic vet visits, food, treats, kennel boarding, vitamins, travel expenses, grooming, and toys.¹¹⁶ According to a recent survey by the American Animal Hospital Association, 57% of the pet owners surveyed "said they would want a pet as their only companion if they were stranded on a deserted island," and 55% consider themselves parents to their pets.¹¹⁷ Whether you consider yourself a parent or a companion to your pet, "[i]t has been suggested that if asked," 90% of pet owners would want to make arrangements for the ongoing care of their pets in the event of death or incapacity.¹¹⁸ A pet trust or pet trust provisions in your traditional documents can ensure your pet will go to a good home when you become incapacitated or upon your death.¹¹⁹

110. Jay MacDonald, *Who Are the Richest Pets in the World?*, YAHOO! FINANCE (Mar. 20, 2012, 3:38 PM), <http://finance.yahoo.com/news/who-are-the-richest-pets-in-the-world-.html>.

111. *Pets Who Have Inherited Millions of Dollars*, FLA. PROB. ATT'Y & FLA. INHERITANCE LAW. FLA. PROB. ATT'Y BLOG (Mar. 24, 2011), http://florida-probate.blogs.com/florida_probate_attorney/2011/03/pets-who-have-inherited-millions-of-dollars-.html (last visited Oct 23, 2012).

112. *Industry Statistics and Trends*, AM. PET PRODUCTS ASS'N, http://www.americanpetproducts.org/press_industrytrends.asp (last visited Oct. 23, 2012).

113. *Id.*

114. *Pet Statistics*, ASPCA, <http://aspc.org/about-us/faq/pet-statistics.aspx> (last visited Nov. 8, 2012).

115. *U.S. Pet Ownership Statistics*, HUMANE SOC'Y U.S., http://www.humanesociety.org/issues/pet_overpopulation/facts/pet_ownership_statistics.html.

116. *See Top 10 Reasons to Have a Pet*, KEY TO BEING (June 9, 2009), www.keytobeing.com/2009/top-10-reasons-to-have-a-pet.

117. *Pet Trusts: A Pet's Best Friend? Will Their Use Continue to Grow?*, LINKEDIN, <http://www.linkedin.com/groups/Pet-trusts-Pets-Best-Friend-4109498.S.102280223> (last visited Dec. 13, 2012).

118. *Id.*

119. *See id.*

B. Your Pet Could Outlive You

As modern medicine continues to increase human life, it is also increasing your pet's life.¹²⁰ During retirement, many people decide to get a dog or cat.¹²¹ With pets having longer life spans, it seems logical to assume that many will outlive their aging owners.¹²² Many breeds of dogs and cats live to be over twenty years old, while parrots and other similar exotic animals live longer than most people do.¹²³ Taking a few hours to make a pet trust to provide for these pets may not be a bad idea.

C. Pet Benefits that Sometimes Go Unnoticed

Modern medicine is not the only thing helping humans live longer.¹²⁴ Studies show that pets decrease heart rate and blood pressure, encourage social interaction, help with depression, cure loneliness, and facilitate all around relaxation.¹²⁵ Pets promote a stable routine in aging owners, and seniors with pets visit the doctor less frequently than those without.¹²⁶ Pets play important and unique roles in everyday life, and it is important that the appropriate arrangements are made for your pets.

D. Providing for Pets in Your Estate

The pet trust is a relatively new but necessary trust because it allows you to choose how your hard-earned money will be spent.¹²⁷ At least forty-five states now allow and recognize pet trusts.¹²⁸ The pet trust enables you to provide for your pet in many different ways by determining who will take your pet when you die or become incapacitated, the amount of monthly disbursements that will be spent on your pet, the type of food your pet will eat, how often your pet will visit the veterinarian's office, which

120. See *Obesity Management—Add Years to Your Pet's Life*, AVMA VETERINARIAN (June 15, 2011), <http://www.vetguru.com/2011/06/15/obesity-management-add-years-to-your-pets-life/>.

121. See *Get a Dog or Cat*, RETIRED BRAINS, <http://www.retiredbrains.com/Home/Senior+Living/Get+a+Dog+or+Cat/default.aspx> (last visited Dec. 13, 2012).

122. See Carracher, *supra* note 51.

123. See *id.*

124. Katherine Scott, *Slideshow: 27 Ways Pets Can Improve Your Health*, WEBMD (June 29, 2011), <http://pets.webmd.com/ss/slideshow-pets-improve-your-health>.

125. *Id.* at slides 3, 5, 6, 10, 26.

126. *The Health Benefits of Pets*, NAT'L INST. OF HEALTH CONSENSUS DEV. PROGRAM (Sept. 24, 2012), <http://consensus.nih.gov/1987/1987healthbenefitspetsta003html.htm>.

127. *Pet Trusts*, *supra* note 117.

128. Sue Manning, *Pet Estate Planning: Not Just for Leona Helmsley Anymore*, TODAY PETS & ANIMALS (June 22, 2011), http://today.msnbc.msn.com/id/43503433/ns/today-today_pets_and_animals/t/pet-estate-planning-not-just-leona-helmsley-anymore/#.UBI76XB3XE4.

veterinarian your pet will see, how often your pet will get walked, and many more provisions may be added to provide for your pet.¹²⁹

Some experts have estimated that less than 20% of dog owners have provided for their pet's future.¹³⁰ This number is steadily increasing, while the number of abandoned pets living in shelters is also increasing.¹³¹ The only way to make sure your pets are going to continue to live happy lives after you are unable to provide for them is to go to a professional and make a pet trust specifically tailored to your pets needs and your objectives.

VIII. DO NOT FORGET WHAT YOU LEARNED

Benjamin Franklin once said, "Failing to plan is planning to fail."¹³² Do not fail to plan by not planning how to take care of your firearms, digital assets, and pets properly. In addition, do not spend time planning for your death without planning for your life. All estate planning should center on you and your goals during your life and protecting your assets for after you are gone.

129. BARRY SELTZER & GERRY W. BEYER, *FAT CATS & LUCKY DOGS* 42–43 (Jim Bee ed., 2010).

130. Danny Meek, *Got Dogs?*, PET TR. L. BLOG (Apr. 4, 2008), <http://www.pettrustlawblog.com/articles/statistics/>.

131. Abigail Neal, *Caring for Fido and Fluffy After You're Gone*, ARIZ. WILLS & TR., <http://www.keytlaw.com/arizonawills/pet-trusts/> (last visited Dec. 13, 2012).

132. Nilesh Raje, *Failing to Plan is Planning to Fail*, BUS. ANALYST TIMES (Apr. 14, 2008, 2:09 PM), <http://www.batimes.com/articles/failing-to-plan-is-planning-to-fail.html>.