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Protecting Yourself From Powers Of Attorney Abuse

A legal document known as a power of attorney can enable a trusted family member, friend, or advisor to make decisions on your behalf, and that can safeguard your interests if you are incapacitated or want to delegate particular responsibilities. But in the wrong hands or with inadequate guidance, a power of attorney may be ripe for abuse. It's important to understand what's at stake and take steps to protect yourself.

In its simplest form, a power of attorney gives another individual the authority to act on your behalf. As the person conferring the power of attorney, you're referred to as the "principal," while the person who is appointed to act for you is called the "agent," or "attorney in fact." Your power of attorney could be broad, giving your agent control over all of your assets. Or you could limit its scope, restricting the agent to a particular task such as selling your home or other real estate.

A durable power of attorney, the most common type, remains in effect indefinitely during your lifetime, even if you're incapacitated, while a non-durable power of attorney is typically used for a specific purpose. A "springing" power of attorney, which is not recognized by all states, can be triggered by a specified future event—an illness or disability, for example.

The main danger in creating a power of attorney is that your agent will abuse—sometimes unintentionally—the authority you've delegated. An agent might exceed his authority, for example, by giving unsanctioned gifts of property. Or the agent could be guilty of intentional "self-dealing"—buying a personal car, say, instead of using funds to pay for the principal's health care. In what may be the subtlest form of abuse, an agent might act within his authority but take an action that undermines the principal's objectives—say, by making a gift that exceeds the annual gift tax exclusion and affects the principal's estate plan.

The consequences of abuse can be devastating. Consider an elderly widow, suffering from Alzheimer's, who enters a nursing home. She has given a power of attorney to a cousin, who has transferred the woman's $100,000 savings to his own account. Whether he thought he was helping her qualify for Medicaid, by reducing her assets, or he just walked away with her money, she would be left unable to pay for her care but also barred from Medicaid, which doesn't recognize "impoverishment" resulting from such transfers.

In some cases, problems may stem from the power of attorney document itself. If the language isn't clear, the agent may inadvertently exceed the intended limits of his responsibility. Other times, a principal may be tricked by an opportunistic relative into relinquishing control or the document

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Conversion Hype Around Roth IRAs Sure To Be Intense

Since the Roth IRA was established in 1997, individuals and couples with more than $100,000 of modified adjusted gross income have been out of luck. Because they couldn't squeeze under that ceiling for converting a traditional IRA to a Roth IRA, they've been deprived of the Roth's tax-free income, protection from required minimum distributions, and hefty estate tax benefits. But the Tax Increase Prevention and Reconciliation Act of 2005 eliminated the income restriction beginning this year, and now millions of affluent households—holding about half of all IRA assets—are eligible.

The media storm has been under way for months, with stories and ad campaigns all talking about converting. But the factors affecting whether you should seize this opportunity aren't as simplistic as they're generally portrayed. Converting hinges on three key variables: your tax savings on avoiding required distributions on your traditional IRAs, which kick in at age 70½; your tax rate in the years ahead; and the amount of cash you have outside your IRAs to pay income tax on a conversion.

The benefits of a Roth IRA conversion can be significant—the Roth truly is a unique vehicle in American tax law. But in many instances, a partial conversion may be best. We have the tools and expertise to calculate the trade-offs in your situation, and we're here to help you.

Jim Joseph, CFP®
Vice President

Do You Know Estate Planning Basics?

With the future of the estate tax up in the air, you may be tempted to neglect estate planning. The federal tax on inherited wealth is currently scheduled to be repealed in 2010, only to return in 2011 under less favorable terms. Congress will most assuredly resolve this issue before year-end, perhaps exempting all but the wealthiest families from estate tax liability. Yet whatever the fate of the law, having a thoughtful, effective estate plan will continue to be crucial.

At a minimum, you need a legally enforceable will that lays out how you want your assets to be distributed. An accompanying, non-binding letter of instruction could further spell out your wishes. You may also want to establish one or more trusts designed to minimize taxes, manage assets for minors, provide asset protection for heirs, implement philanthropic plans, or protect assets from creditors. And a living will (or health care proxy) could provide valuable direction on end-of-life health care.

Are you familiar with estate planning basics? Use this quiz to test your knowledge.

1. Which of the following is true?
- a) A will is legally valid only if drafted by an attorney.
- b) You can transfer jointly owned property through a will.
- c) A will may appoint a guardian for minor children.
- d) Your property must go through probate if you don't have a will.

2. When can a will be changed and remain legally enforceable?
- a) Only if the changes are recorded by an attorney
- b) Only when the heirs named in the will provide their consent
- c) Any time before your death or mental incompetence
- d) Never

3. In 2009, the federal estate tax exemption was:
- a) $1 million
- b) $2 million
- c) $3.5 million
- d) Zero

4. In 2010, the annual gift tax exclusion shelters gifts to individuals of up to:
- a) $10,000
- b) $13,000
- c) $1 million
- d) Zero

5. For estate tax purposes, the value of assets is based on:
- a) Their fair market value on the date of the owner's death (or six months from that date)
- b) The amount received from the sale of those assets
- c) The assets' original cost
- d) The value stated in the owner's will

6. A "power of attorney" is best described as:
- a) A bequest in a legally validated will
- b) A document authorizing an agent to act on your behalf
- c) A document allowing life support systems to be shut down
- d) The use of a lawyer in estate planning matters

7. Which of the following is not true?
- a) The value of your principal residence is excluded from your estate.
- b) The value of property transferred to a U.S. Citizen spouse is exempt from estate tax at your death.
- c) A testamentary trust takes effect when you die.
- d) A will normally determines who will care for minor children.

If you have questions about estate planning or need to refine your plan, please give us a call. We can work with you and your attorney to make sure all of your needs are met. ●

Answers: 1-c; 2-c; 3-c; 4-b; 5-a; 6-b; 7-a

Fighting For Lower Credit Card Rates

For beleaguered credit card users, help has arrived. The Credit CARD Act (officially, the Credit Card Accountability, Responsibility, and Disclosure Act), signed into law in May 2009, is being phased in, and major new rules went into effect in February 2010. Banks and other card issuers must now give you 45 days notice before a change to your card agreement can take effect, they can no longer raise interest rates on existing balances unless you're more than 60 days late with a payment, and they aren't allowed to hike the rate on a new card during the first year.

But these changes come at a tough time for banks. The recession has pushed millions of consumers to the brink of bankruptcy, and credit card losses are soaring. In advance of the new rules, credit card issuers have raised rates, slashed credit limits, and demanded higher minimum payments. To avoid paying punitive fees and rates, consider these tactics.

Don't be late. If your payment arrives even a day after it's due, you'll likely be hit with a steep fee and a harsh interest rate increase—in some cases to annual rates exceeding 30%. On a $10,000 balance, that comes to more than $250 a month. The simplest way to avoid being hit with these extra charges is to be vigilant about paying up, perhaps by arranging for automatic payments. And if there's no time to mail a check, pay by phone or online. Even if there's a small fee, you'll come out ahead.

Read your mail. Card companies can't make changes without notifying you in writing—but that's what fine print is for. Don't throw away inserts that come with your bill or delete email notifications without reading them. If you don't want to accept a higher interest rate or a lower credit limit, write back to say you're closing the account.

Ask for a better deal. Banks have

Japan's 20 Years Lost: Can It Happen In The U.S.?

Twenty years after Japan's "economic miracle" collapsed, the Asian nation still has not recovered its once-vaunted economic clout. Japan's debacle involved a spectacular jump in stock and real estate prices followed by an equally spectacular fall as those bubbles burst, much like the twin "pop" that sent the United States into a recessionary spiral in December 2007.

Does that mean Americans are doomed to spend the next two decades struggling to get their economic lives back? And what lessons can investors learn from the Japanese experience?

Echoes of a debacle in Japan. The start of Japan's so-called "lost decade" in 1990—which has stretched to two decades since that phrase was coined to describe Japan's extended economic malaise—was triggered by a period of irrational exuberance in the 1980s. Loose monetary policy fueled a rapid rise in stock and real estate prices. Driven by speculation, leveraged assets, and investing excess, Japanese industrial production rose by 50% during the 1980s, and by 1989 Japanese banks had become the largest in the world. When the bubble burst in 1990 and the economy collapsed, investors belatedly realized that much of the growth had been illusory.

The same thing happened in the United States during the period 2002 to 2007, as "easy money" policies, consumer spending, and foreign investment pushed real estate and stock prices ever upward—until the bubble burst, sending over-leveraged financial institutions to the brink of bankruptcy and the U.S. economy to the edge of systemic failure. Two years later, the U.S. jobless rate surpassed 10%, businesses have trouble obtaining credit, and government officials are weighing further intervention in the economy even as the national deficit soars to unprecedented levels.

From an investor's point of view, the story is illustrated vividly by looking at the most-quoted stock market averages in the two countries. Japan's Nikkei average hit an all-time high of 38,957.44 intraday Dec. 29, 1989, then fell off a cliff. In 2009, the Nikkei never exceeded 10,800, and it nearly fell below 7,000 in March. In the United States, the Dow Jones Industrial average soared to a record intraday high of 14,198.10 on Oct. 11, 2007, then plunged as the economy deteriorated, dropping as low as 6,547.05 in March 2009 before rallying back above 10,000 in the last few months of the year.

Why the U.S. should fare better. While the similarities between the countries' boom-and-bust debacles are striking, there are also fundamental differences. For instance, the U.S. crisis is unlikely to be as deep and long-lasting as the Japanese downturn largely because the U.S. boom period did not even approach the stupendous price increases seen in 1980s Japan. During the 1990s, Japanese real estate lost an average two-thirds of its value. In contrast, U.S. real estate prices are expected to fall 30% to 40%, although some areas, including Las Vegas, Phoenix, and Miami, have seen steeper declines.

Moreover, the U.S. economic structure is more open and fluid than that of Japan, where banks and major industries had a tendency to sweep problems under the rug. In the United States, major banks have quickly (with the push of the government) written off billions in bad debt in an attempt to get a recovery going without unnecessary delay.

But the most basic difference between Japan in 1990 and the United States today lies in the speed in which interest rates were lowered. American economists, most notably current U.S. Federal Reserve Chairman Ben Bernanke, have criticized Japan's central bank for failing to reduce interest rates quickly enough during the early 1990s, with the delay spawning rampant, long-lasting deflation. Eager to avoid that mistake, the Fed has taken several steps to cut interest rates and keep money flowing. And both the Bush and Obama administrations have pumped billions of dollars into the U.S. economy in the form of corporate bailouts and economic stimulus plans.

Even though the crisis in the United States seems unlikely to mirror the Japanese experience, it's impossible to know what will happen to stocks, real estate, commodities, and currencies in the near term. That's why we advise you to continue protecting yourself from the vicissitudes of the stock market and the world economy by remaining broadly diversified in your investments. That's the best way to ensure you are in a good position to benefit when the economy starts coming back to life. ●

the right to raise rates and fees arbitrarily. But you have leverage, too, and simply requesting more favorable terms may pay off. Suppose, for example, you're a long-time customer with a good payment record. If you mislaid a bill or you're having trouble meeting your monthly minimum, a call to customer service to explain your situation could win you a reprieve. Faced with the prospect of a defaulted account, credit card companies fairly routinely cut rates and extend repayment periods for responsible cardholders.

Try some legal muscle. Sometimes card issuers are just wrong. They may charge late fees for payments that arrived on time—and then penalize you for exceeding your credit limit. If you dispute a bank action and aren't getting anywhere, ask to speak to a supervisor, threaten to hire an attorney, even consider hiring an attorney to write a strongly worded letter on your behalf. Lawyers' fees aren't cheap, but here, too, a successful resolution could be well worth the cost. ●

Beware Of Homeowner's Insurance Gaps

Disaster may strike your home when you least expect it. There could be damage from flooding, an earthquake, termites, or even mold—just to name a few possibilities. And though you probably assume repairs will be covered by your homeowner's insurance policy, they may not be. Your policy may exclude more events than you realize. Even when you are covered—for, say, flood damage—there may be "gaps" in your coverage that limit the amount you can recover.

The good news is that a typical homeowner's policy covers losses resulting from fires, tornadoes, and severe storms. But the list of what it normally doesn't cover may surprise you. For instance, coverage may not extend to floods and earthquakes, although you can usually add a policy rider for such events. The rider's cost will vary based on whether you reside in a high-risk area.

Similarly, if you have to clean up a mess created by a water or sewage backup, the expense won't be covered by standard homeowner's insurance. But here, too, you can purchase a special rider to avoid this headache, often for less than $100 a year.

The list of other types of damage that usually aren't covered range from mold to insect and termite infestations to acts of terrorism, war, and nuclear attack. Dig your policy out of your files and take a few minutes to assess your risk exposure for these events.

Even if you're covered for damage—through standard insurance or a rider—payments from the insurance company are based on the property's replacement cost, not its fair market value. Also, if your home is destroyed and it's insured for less than the replacement value, you'll have to pay some of the rebuilding cost. In addition, deductibles and maximum dollar caps may affect reimbursements for possessions that are destroyed or stolen.

In terms of liability exposure, one way to avoid dire consequences is to supplement your current coverage with an umbrella liability policy. As the name implies, the umbrella policy sits on top of your homeowner's and auto insurance policies to provide additional protection. For instance, if a neighbor slips and is injured on your icy sidewalk or a tree topples onto a car parked in front of your home, an umbrella policy may pick up the slack.

Just like other forms of insurance, you'll need to shop around for the best umbrella policy. And keep in mind that umbrella coverage kicks in only after other insurance is exhausted, and umbrella policies usually carry deductibles equal to the required underlying limits for the auto and homeowners policies. Still, the cost of umbrella coverage usually isn't prohibitively expensive. You may be able to obtain $1 million in liability coverage for $200 to $300 a year. And you may get a discount for using the same carrier. That could prove a small price to pay for plugging the gaps in policies. ●

Powers Of Attorney

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could be executed improperly and not be accepted by financial institutions.

How can you enjoy the benefits of a power of attorney without putting your financial well being at risk? These suggestions could help.

1. Get it right from the start. Have the document drafted by an attorney experienced in estate planning, and then discuss the details with everyone who might be affected. If there are questions or objections, the attorney can address them in the final document.

2. Consider limiting the powers in the document to a specific few. While a broad power of attorney may be advisable in some situations, a narrower scope, with detailed explanations of what the agent can and cannot do, could reduce chances of abuse.

3. Use a professional you trust as the agent. There are clear benefits to working with someone who is experienced and is bound by a profession's standard of ethics. Another option is to use co-agents—for example, pairing an adult child with a professional—although this can be burdensome unless responsibilities and procedures are clearly defined. And if the estate is large enough to separate some assets into a trust, a corporate trustee could be best. It's also important to have at least one successor agent in case there's a problem with the primary agent.

4. Require regular reports to a third party. Having your agent provide accounting statements to a third party such as an attorney or a CPA creates a system of checks and balances that could prevent or uncover irregularities.

5. Coordinate the power of attorney with other aspects of your estate plan. Handled properly, a power of attorney can be an essential estate planning tool, and it should be reviewed periodically to make sure it reflects your current wishes. We can work with your lawyer and other advisors to make sure all of your interests are being served.●

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