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In the Spotlight:

Gideon Rothschild received the distinction of being listed in the 2011 edition of *Chambers USA* as one of "America's Leading Lawyers for Business" for his work with clients in the wealth management field. **Gideon** was also nominated by in-house counsel and his peers to appear in *Euromoney's Guide to the World's Leading Trust & Estate Practitioners* for 2011.

Lori Anne Douglass was quoted in the May 2011 issue of *Black Enterprise* magazine. In the article, "Playing Catch-Up", Lori addresses steps young families should take now to protect their family's financial future. Please click [here](#) to view the complete article.

Daniel Rubin's article "Seven Good Reasons Credit Shelter Trust Remain Relevant" was published in the June 2011 *Journal of Accountancy*. Please click [here](#) to view the article.

Before You Forget That You Can't Remember: Planning for Long Term Disability

June and Ward Cleaver have it all: two loving sons, Wally, a lieutenant colonel in the Marine Corps, proudly serving the country in Afghanistan and Theodore, a well-known trial attorney. Three perfect grandchildren, Olivia and Isabella (Wally's twins) and Simon, named after Ward's Dad. They live well with \$25 million in liquid assets, a summer home worth \$2 million and a sprawling \$8 million home that they share with their beloved German Shepherds, Hank and Aaron.

They also have a secret. Ward was diagnosed with Stage 1 Alzheimer's Disease more than a year ago. Although both Wally and Theodore have noticed that Dad seems forgetful, confused and cranky, if they inquire, Ward just laughs and says "Don't worry about me. I'm the father and you're the child". June winks and says "Your Dad's just tired", but it's June who always looks exhausted.

Tragically, just as Theodore decides there's definitely something wrong with Dad, June telephones, sobbing uncontrollably, saying:

"I can't do it anymore, pretending everything is fine, when it isn't. Your Dad has Alzheimer's. I can't help him bathe and dress and do everything else. I've spent the money in the bank and can't get to the brokerage accounts or the IRAs. I just received a letter from the IRS that we are facing a gift tax audit and your brother has been injured."

As Theodore rushes to the house, blaming himself for his own denial, he wonders how could they have so many troubles? What can be done to help them now?

Planning for Disability: Why You Can't Leave It to Beaver

By Lori Anne Douglass

Ward and June Cleaver have successfully hidden Ward's Alzheimer diagnosis for almost a year, but the past year has been filled with monumental change and now the Cleavers desperately need help.

Guardianship and Accessing Assets

Ward and June have plenty of money and other liquid assets, yet June can't get to any of it. Ward had always been a sophisticated, successful investor, husband and father who took care of his family. They never thought much about the brokerage and IRA accounts being in Ward's name. After all, the word "divorce" never came up in the Cleaver home. As Ward's condition worsened, June started helping him with daily activities such as paying the bills. June also tried to continue to be a good homemaker, but as Ward's needs increased, it became impossible for June to maintain the home's upkeep by herself. Therefore, household expenses began to rise as June started to order-in regularly, increased the housekeeper's days, and used a car service on a daily basis.

When June realized the joint checking and savings accounts were almost depleted, she contacted their money manager and Wally's life-long friend, Eddie Haskell, and asked him to transfer cash to their checking account. June is stunned when Eddie says: "Sorry Mrs. C, I need the big guy to tell me to make the transfer. I know it's silly, but those are the rules."

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Simple (and Not So Simple) Gifts

By Kerrie C. Horrocks and
Vanessa L. Kanaga

The Inadvertent Gift

The IRS is reviewing records of real property transfers in order to enforce compliance with gift tax reporting requirements.

June was absolutely horrified when she received the letter from the IRS stating that she and Ward had possibly made an unreported gift! Frantically, she explained to Theodore that, although she recalled the estate planning attorney mentioning something about gifts when she and Ward signed their Wills several years earlier, they had never discussed it further and certainly had not made any gifts. After calming June down by reassuring her that they would work through this together, Theodore began to gently ask whether June could recall any transfers of cash or other property she and Ward may have made recently, even if she did not think they had made a gift. June thought for a few moments, and then she remembered.... Shortly after Ward's diagnosis, June bumped into an old college friend whose husband had also recently been diagnosed with Alzheimer's, and who mentioned that one of the first things they had done after receiving the diagnosis was to take her husband's name off the deed to their home and place her name and their daughter's name on the deed. June became concerned that Ward's name was still on the deed to their primary home and their summer home, and asked Ward if he thought they should remove his name from the deeds. Ward could not bear to give up ownership of their primary home, but, wishing to provide June with peace of mind, signed a deed transferring ownership in their summer home out of Ward's name and into June's and Wally's names.

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Planning for Your Four Legged Family Members

By Jenna R. Millman

Ward and June adopted their beloved German Shepherds, Hank and Aaron, 4 years ago from the same breeder who sold them their prior dogs, Babe and Ruth, who lived to be 14 and 15 respectively. Based on their lineage, Hank and Aaron should have at least 10 good years left with Ward and June. Unfortunately, the burden of caring for 2 very large and active dogs while also responding to the numerous issues surrounding Ward's Alzheimer's is weighing heavily on June. Ward used to take the dogs out on walks and feed them every morning but with Ward's declining health, June is now solely responsible for their care. Exhausted and overwrought, June has taken to leaving the dogs outside for most of the day. Although Ward and June are still committed to Hank and Aaron, and in fact the dogs still bring Ward a lot of joy, Theodore has been brainstorming as to what might be done to provide for the dogs in the future. Unfortunately Theodore is allergic to dogs and Wally's coop does not permit dogs over 20 pounds so the family needs to consider what other options might be available for the dogs if the burden becomes too much for June.

Pet Trusts

Theodore recently read about the pet trust that Leona Helmsley set up for her dog, Trouble, and is wondering if it might make sense for his parents to set aside money in trust to care for Hank and Aaron.

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Planning for Disability...*

June replies: "Eddie, Ward is still asleep and we need that transfer made today."

"For you anything. I will fax you a joint ownership form and power of attorney. Mr. C reads them over, signs them, I pick them up this afternoon and we make the transfer before 5."

"Thank you Eddie, please fax over the forms."

"Done. I will bring another set with me because Mr. C has to sign the power of attorney in front of two witnesses and a notary public. We can either walk to the bank or I will bring a notary public with me, which is easier for you?"

June became flustered. She didn't want Eddie to see Ward in his current condition. More importantly, June knew that Ward would have a hard time understanding the documents. She also knew her husband would never sign a document he didn't understand. Just as the fax phone rang, June remembered she and Ward had executed Powers of Attorney with their Wills when the boys were young.

June's elation turned to despair as she pulled out Ward's power of attorney only to remember Ward named his father as his attorney-in-fact and his brother as the alternate. She could hear Ward saying "Don't worry, nothing is ever going to happen to me and even if something should, Dad and Bart will take care of you just as I do." Unfortunately, Ward's father was dead and his brother suffered a stroke and was unable to handle his own financial matters, let alone assist June.

June's last hope was that Ward would sign the documents when

they went to the bank. To test the waters, June explained why she needed money transferred to checking. Ward, smiling, said, "Whatever you need. Where do I sign?" When June handed him the documents, however, the combination of the small print and Ward's pride produced the result June expected. Ward put down the pen, smiled and said "Let's eat breakfast, I will sign them later."

When Eddie called, June quietly said, "Ward had an unexpected appointment. We'll go to the bank ourselves and mail the documents to you."

"Are you sure? I can stop by when he gets home," said Eddie.

June replied, "Ok, I will let you know. My love to your mother."

June looked out the window while wondering what she would do now. In the backyard were the Cleavers beloved German Shepherds, Hank and Aaron. Over the past year, daily walks and active play with two large dogs had become mission impossible. When June began to notice Hank chewing on the rugs and furniture, and Aaron began having accidents in the house, she simply increased their time in the backyard. Now Hank and Aaron rarely came into the house at all.

Later that day June received a letter from the IRS and a call that Wally had been injured in combat. She broke down, called Theodore and told him everything.

Theodore was shocked that his parents, always so responsible and open with their children, had behaved so secretly for so long. But Ward and June are not the exception, but rather the norm, when confronting issues of disability and aging. Like many people, it was not the cost of care

or ignorance as to whom to ask for help that prevented them from addressing their problems, but rather the stress, anxiety, fear, denial, confusion, concern, anger, disappointment, embarrassment, etc., that occurs when competent and capable adults start to succumb to the aging process. Now that the truth was out Theodore got right down to business.

He first called Eddie Haskell to find out how his parents could get to their own money. Eddie explained that because the brokerage accounts and IRAs were only in Ward's name, Ward had to give June written authorization to access the accounts. Unless Ward could understand and sign these documents, the only way June could access their accounts and make financial decisions would be to become Ward's legal guardian.

Fortunately, Theodore and his wife, Penny, are both lawyers and they quickly learned that June would have to bring a court proceeding to become appointed Ward's legal guardian to oversee his personal and financial needs.

The action, commonly known as an "Article 81 proceeding", is the process by which the court appoints a loved one, or other interested party, to be in charge of a disabled adult's physical self and financial assets. Following the appointment, the guardian makes every decision for the disabled person such as where to live, whether to travel, how and when bills and taxes will get paid, which assets should be transferred or sold, and whether greater medical attention is needed.

Luckily for the Cleavers, Penny was able to file the proceeding on June's behalf. As an Article 81 proceeding always involves immediate needs and exigent circumstances, the court quickly appointed a lawyer

to conduct an independent investigation into June's application who reported to the court that Ward was suffering from a disability requiring June's appointment as Ward's personal and property needs guardian. Ward, as the person about to lose the legal right to make all of his most personal decisions and control of his assets, is entitled to a court appointed attorney of his own, but in Ward's case, there was no need for such an appointment. On the hearing date, Ward told the court that he wanted June to be his court-appointed guardian and that if it became too much for June, that Theodore should be the successor guardian.

Theodore also looked into the letter from the IRS and as it turned out, the Cleavers were not being audited at all. The transfer of Ward's interest in their vacation home to Wally had been a very good idea. In fact, as Ward's property management guardian and in her own right, June should make additional gifts to their children and grandchildren.

Wally returned home and while recuperating became his Dad's daily companion. Wally's physical therapy required long walks and Hank and Aaron, once again walked daily, were soon their happy obedient selves.

Although the Article 81 proceeding went smoothly for the Cleavers, many do not. The reasons why are as numerous as the number of people that will suffer sooner or later from a disability. As all family members and interested parties may petition for the appointment, many guardianship proceedings are hotly contested and take much longer than a few months to be resolved. At least one court appointed attorney is required in every proceeding and in many proceedings there may be several

court appointed professionals involved whose fees are paid from the alleged incapacitated person's funds. Incapacity not only needs to be alleged but proven to the court, often requiring the involvement of doctors, geriatric care managers, social workers, home attendants, family members, employees and whomever else's testimony is relevant to the proceeding. Unless special circumstances can be demonstrated to allow for sealing the record, the proceedings are open to the public often exposing sensitive personal and financial information. The court sets forth the parameters of the guardian's duties and if a circumstance occurs where those powers need to be modified or expanded, court approval is required and a new proceeding must be filed by the guardian.

Action Plan

So what can be done to avoid the need for the appointment of a legal guardian? The answer is simple, proper planning long before the need arises. Everyone should:

1. Execute a Durable Power of Attorney to appoint an agent to handle financial matters in the event of disability.
2. Execute a Health Care Proxy to appoint an agent to make health care decisions, including decisions regarding life sustaining measures as necessary.
3. Nominate, in writing, a guardian of the Property and Person. The courts must give priority to a nomination of guardianship if the proposed guardian is qualified to serve and was appointed when the required mental capacity to make such an appointment is not in question.
4. Consider executing and funding a revocable trust. A

revocable trust allows you to specify how your assets will be managed, and by whom, in the event of disability and at death.

5. Take stock of how assets are owned. If you are not on the account, the deed, the title, etc., you are not the owner. Confer with your estate planning advisor to make sure accounts are jointly or individually titled as you wish them to be and in accordance with a comprehensive financial and estate plan.

6. Confirm disability, retirement and death benefits available through your employer. Often an employer's benefit plan is very financially beneficial and many people simply fail to take advantage of all the planning opportunities offered through an employer.

7. Consider purchasing disability and long term care insurance. These policies can be invaluable during a disability to help pay the cost of care for either the entire length of the disability or for a term certain.

8. Review beneficiary designations on all retirement plans and insurance policies. The beneficiary designation determines to whom an asset will transfer, even when there is a conflict between the beneficiary designation and a Will. It is crucial to make sure that your beneficiary designations and overall disability and estate plan coordinate to maximize tax benefits and the inheritance to your loved ones.

9. Consider gifting assets as part of a comprehensive financial and estate plan. As discussed in the article "Simple (and Not So Simple) Gifts," gifting programs

are beneficial for tax, asset protection and personal reasons.

10. Consider options for your beloved pets in the event of disability or death. As discussed in "Planning for Your Four-Legged Family Members," pets are also affected by a disability or death and there are many options to make sure they are protected.

11. Prepare and periodically review a Last Will and Testament and comprehensive estate plan. While we will not all suffer a mental or physical long-term disability, everyone is going to die, we just don't know when.

With appropriate action, the Cleavers' story had a happy ending, and with proper disability and estate planning yours will too. Feel free to call the attorneys of Moses & Singer to assist with your disability and estate planning needs.

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Simple (and Not So Simple ...*

Although Ward and June did not realize it at the time, Ward made a gift to June and Wally when the summer home was re-titled in June's and Wally's names. It can be easy to make a relatively simple transfer of property, such as re-titling the deed to a home, without realizing that a gift has been made. This is especially true where the transfer is made, not out of a desire to transfer wealth to younger generations, but out of other concerns, such as asset protection or ease of administration. However, any gratuitous transfer of property to another is a gift subject to gift tax, and must be reported on a Form 709, *United States Gift (and Generation-Skipping Transfer) Tax Return*, unless it falls within certain limited exceptions. Fortunately, Theodore contacted a colleague who focuses her practice on estate planning.

She advised him that, while the gift to June and Wally would need to be reported on a gift tax return, there would be no Federal gift tax due on the transfer as Ward had not yet used any of his exemption from Federal gift tax, which is currently \$5 Million per person, and that the transfer was actually good estate planning for June and Ward.

How did the Internal Revenue Service find out about the transfer?

A petition filed in a California court recently made public that the IRS has begun a "compliance initiative" in which state and county records regarding real property transfers are reviewed to cross-reference real estate transfers to non-spouse family members with gift tax return filings (or the absence of same).

If you have made an unreported gift, you should contact your estate planning advisors as soon as possible to ensure that the gift is correctly reported in order to avoid a potential IRS examination, and to limit any interest and penalties which may be accruing on any gift tax due.

Gifting Opportunities

Theodore's estate planning colleague advised June that there are currently opportunities available to her individually, and as Ward's guardian, to significantly reduce their taxable estates by making additional lifetime gifts, but she would have to act quickly because the \$5 million gift tax exemption under current law is only available until December 31, 2012, and will revert to \$1 million on January 1, 2013, unless legislation is passed by Congress.

Gifts Utilizing Exemption

Ward's gift to Wally used up \$1 million of his gift tax exemption, but he still has \$4 million of exemption available and June has her full \$5 million exemption available. By making lifetime gifts, June and Ward can remove the gifted property as well as any future income or appreciation related to that property from their taxable estates. If gifts are made to long-term dynasty trusts, the gifted property and appreciation can be taken completely out of the estate and gift tax system for multiple generations.

Furthermore, planning techniques that benefit from valuation discounts and/or low interest rates can result in significant tax-free transfers of wealth. For example, assuming Ward and June transferred assets that were subject to a 25% discount for lack of control and/or lack of marketability, they could transfer up to \$12 million in total wealth in 2011 or 2012 without incurring any gift tax.

June is considering a number of planning options presented to her, including transferring the home to a qualified personal residence trust ("QPRT") and transferring stock to a dynasty trust and/or a grantor retained annuity trust ("GRAT"). There are a number of factors to consider, such as the likelihood of the assets appreciating, the grantor's life expectancy (both QPRTs and GRATs are only effective if the grantor survives the trust term), but most importantly, the comfort level Ward and June have in making the transfers.

Annual Exclusion Gifting

June also begins to make "annual exclusion" gifts from her and Ward (in the amount of \$13,000 for each of them in 2011) to each of their sons, daughters-in-law and

grandchildren, either outright or to certain kinds of trusts. By doing so this year, she has removed \$182,000 from their taxable estates. If this gifting pattern continues over 10 years, June and Ward will remove over \$1.8 million from their taxable estates without incurring any gift tax or using their gift tax exemptions.

The benefits of annual exclusion gifts can be increased by making annual exclusion gifts to a 529 plan. Up to five-years' worth of annual exclusion gifts can be made to a 529 plan in a single year. For example, June could give up to \$130,000 (from June and Ward) to a 529 plan for each grandchild. Such a "front-loaded" gift to a 529 plan removes assets from the donor's estate (as long as the donor survives the five-year term) while allowing the beneficiary of the 529 plan to take advantage of the growth of the transferred assets.

Further, if June would like to help pay tuition costs for her grandchildren or Wally's unreimbursed medical expenses, she should consider making the payment directly to the school or health care provider. By doing so, the payment is not subject to gift tax, does not use any gift tax exemption and does not count against the annual exclusion amount.

As June learned, annual exclusion gifts can be a simple and cost-effective method of transferring wealth, reducing taxable estates, and preserving gift tax exemption. She also appreciates the benefits of utilizing the increased gift tax exemption while it's available and will be moving forward with this planning in the near future.

Action Plan

Clients should reconsider their estate and gift plans and act now

while these advantageous wealth transfer opportunities remain available.

Continued from Page 2 Planning for Your Four Legged...

A pet trust is a legal arrangement that allows pet owners to set aside funds for the continued care of their pets in the event of an owner's death or disability. The pet owner, also known as the "settlor" of the trust, will appoint a trustee who will be responsible for managing the funds set aside for the pet or pets. The trustee will then make payments as needed to a caregiver selected by the settlor. The caregiver is the friend or family member who the settlor selects to take physical custody of the pets. The trustee can be the same individual as the caregiver or the settlor can name a different party as caregiver. This arrangement is memorialized in a written trust agreement in which the settlor can describe with specificity the kind of continuing care they would like their pet to receive. Following the death of the last surviving pet, the pet trust will terminate and any assets remaining will be distributed as provided by the settlor in the trust agreement.

The majority of states, including New York, Connecticut and New Jersey, have enacted pet trust laws. In some states (including New York and Connecticut), a pet trust is permitted to continue for the rest of the pet's life. However, in other states (including New Jersey), pet trusts are required to terminate upon the earlier of the pet's death or 21 years after the creation of the trust (which can be problematic in the case of animals with longer life spans).

Key decisions involved in establishing a pet trust include selecting the trustee, selecting the caregiver and determining the

amount of funds needed to cover the expenses for the pet's care and maintenance, as well as the amount of funds needed to cover the expenses of administering the pet trust (including trustee commissions).

Although Ward and June will not be putting aside \$12 million for the dogs like Mrs. Helmsley, they could put aside a reasonable sum in trust in order to ensure that the dogs are well cared for should they become unable to do so themselves.

Pet Retirement Homes

Another option that may work for Ward and June, especially if none of their friends or family members are able to take Hank and Aaron in, is a pet retirement home. A number of veterinary schools sponsor pet retirement homes (sometimes referred to as "sanctuaries"), including Oklahoma State University's Center for Veterinary Health Sciences and Texas A&M University's Stevenson Companion Animal Life Care Center, which has a home-like setting where the animals live a communal lifestyle with people living on the premises. There are also private institutions that provide life long care for pets after owners are no longer able to care for them. As an alternative, some veterinary programs also place pets in pre-screened homes and monitor the care of the pets to give the pet owners peace of mind.

The price charged by pet retirement homes is typically based on the type of animal, age, weight, health and grooming requirements. At pet retirement homes sponsored by veterinary schools, the cost of care can range from \$25,000 for the life of the animal to upwards of \$100,000. In contrast to a pet trust, in the event that the full amount of the assets set aside for the pet are not needed, the pet owner cannot

typically direct how those assets will be distributed (although at Texas A&M University's Stevenson Companion Animal Life Care Center, where the funds for the pet's care are treated as an endowment, once the pet no longer requires the funds, the owners have

the option to have the funds go toward any facet of veterinary medicine they choose).

Although Wally has offered to pitch in to help June care for the dogs for now, Theodore may want to begin researching the costs associated

with a pet retirement home and may even want to visit some of the facilities in order to give his parents peace of mind.

Lawyers in Moses & Singer's **Trusts and Estates** and **Asset Protection** practice groups are internationally recognized for their considerable skill and extensive experience in the fields of estate planning and wealth preservation. Our lawyers provide a full range of tax and estate planning services to corporate executives, entrepreneurs, and other high-net-worth individuals. In addition to experience in the traditional areas of will and trust drafting and estate administration, our attorneys excel in the latest techniques to effectively plan for business succession while minimizing taxes and preserving and protecting clients' wealth from potential creditor risks. The client's personal objectives and wealth preservation goals are integrated into the estate planning process.

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