The Planning Quarterly

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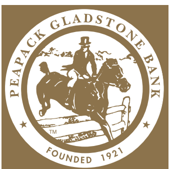

PEAPACK PRIVATE

Wealth Management

Welcome to our inaugural issue of the **Peapack Private Planning Quarterly**. Planning issues arise at every stage of life—the articles here address a few of them. Each quarter, we'll take a deep dive into topics our clients find meaningful. Please reach out to our authors—or to any of our investment and planning professionals—with your questions. Our guidance can help you achieve your financial goals.

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It’s 2020 — What’s in Your Estate Plan?

Claire E. Toth, JD, MLT, CFP™

Most of us have our estate plans drawn up at a life transition point—a new baby, perhaps a divorce or the death of a family member. If it’s been more than three to five years since you revised your own estate plan, it’s high time to review it now and determine if it still makes sense, or if some changes are in order.

Start with the basics. Here are the key estate planning documents everyone needs:

- A durable power of attorney, naming someone to act for you legally and financially if you are unable to do so,
- A health care directive with end of life instructions and a medical power of attorney, often in a single document,
- A will, and
- Depending on your situation, a revocable trust (sometimes called a living trust).

Many people focus only on the will, giving little thought to the power of Attorney and Medical Directive. That has it backwards—these documents come into effect while you are alive, albeit unable to make all your own decisions. You should care deeply about who will handle those matters on your behalf.

Thus, step one of your estate plan review is to look at your fiduciaries—those named to act as representative, executor, trustee, and guardian. Are those still the people who should manage your finances, make your medical decisions, oversee your estate, and raise your children if you cannot? Your current executor may be deceased; your children’s guardians may be divorced; you get the idea.

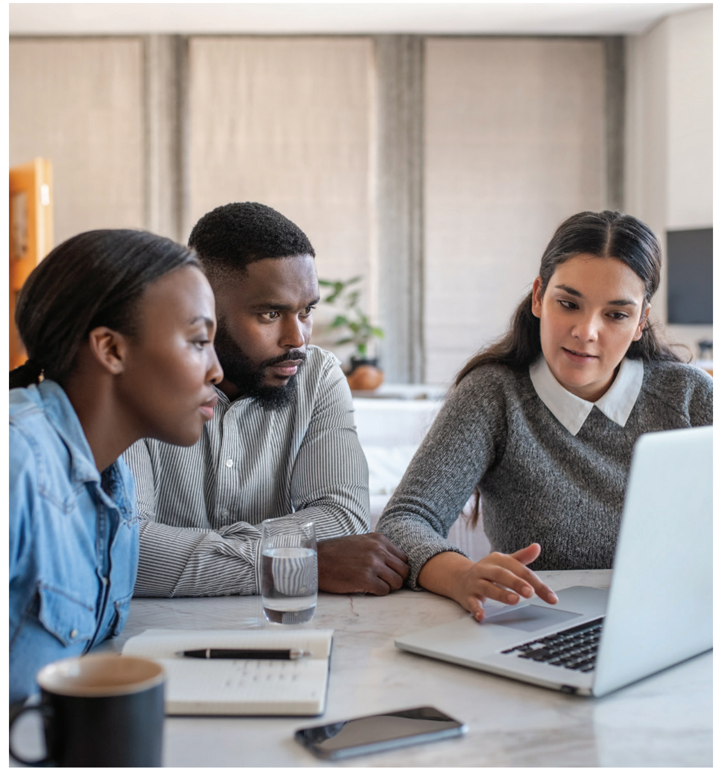
The person holding your financial power of attorney, likely the same person named as executor, doesn’t need to be a financial genius. Rather, he or she should be someone who understands your wishes, makes conscientious decisions for you, and maintains financial records if needed. The person holding your medical power of attorney may make life and death decisions on your behalf. This is often your spouse or adult child. It need not be the same person handling your finances.

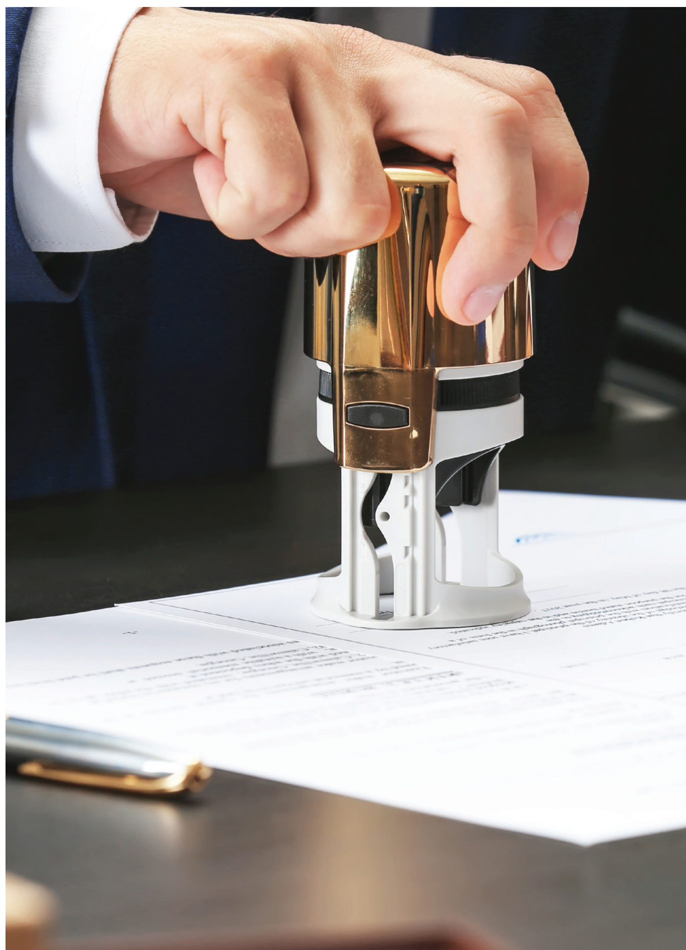
Next, review your dispositive provisions—who will inherit from you and how (outright or in some sort of trust)? Chances are, your will is larded with trusts—there is likely a credit shelter trust (sometimes called a family trust), often a marital trust, plus trusts for minor children. Many of those trusts were envisioned in a world where the estate tax mattered. Twenty years ago, the most a person could leave to her children (or any non-spouse) before paying an onerous estate tax was $675,000. Ten years ago, that dollar amount stood at $5 million; today it is $11.8 million. As fewer people are subject to the estate tax, fewer people require elaborate structures to avoid that tax.

Still, the estate tax may return. For people in some states—New York and Massachusetts among them—it never went away. Throughout this period of flux, estate planners have devised simplified ways to deal with an on-again, off-again estate tax, allowing the surviving spouse to decide whether to create a trust at the first death and if so, in what amount.

Trusts created for non-tax reasons continue to be important tools in estate planning. If there is a blended family or an at-risk beneficiary, be sure to discuss trusts with your estate planner. "At risk" covers a host of situations, such as anyone who shouldn't be left to manage money alone: minor children, those with special needs, people getting divorced, in financial trouble, or with substance abuse or mental health issues.

The revocable trust (or living trust) mentioned at the outset is a different structure. It operates during your life, serves as a will substitute at death, and avoids probate. There remain states where probate is lengthy, expensive, and complex—among them New York, California, Florida, and New Hampshire. Revocable trusts are used routinely there. For everyone, a revocable trust is particularly useful in later years, where you may not want—or be able—to run your financial life independently. Although you need a power of attorney, the rise of identity theft and elder abuse has many financial institutions wary of them. It is often easier for a family member to help manage your assets as co-trustee or successor trustee of a revocable trust than by using a power of attorney. Discuss this with your estate planner once you are eligible for Medicare or Social Security.





As the estate tax becomes less of an issue, the income tax looms larger. Most non-retirement assets get a new cost basis at death, equal to fair market value. This means the heirs can sell those assets with little, if any, tax cost. Distributions from inherited retirement assets—other than Roth accounts—retain their character as ordinary income. Starting in 2020, a retirement account inherited from a non-spouse (typically a parent, or maybe a sibling) must be fully distributed within ten years of death. Those with significant IRAs should consider carefully what this means for their children. Mature, established adult children ought to be able to handle what is essentially a ten-year fire hose of ordinary income. Younger, less financially experienced adult children could be ruined by it. Discuss this with your estate planner. If you intend to make gifts to charity, your IRA is the ideal vehicle.

Non-tax law changes are worth incorporating as well. For example, a recent New Jersey law gives your executor or power of attorney holder access to your online accounts—but only if your estate planning documents explicitly say so. As more financial management moves online, you want this provision incorporated.

Also critical is reviewing beneficiary designations on your IRAs and other retirement plans, along with any life insurance or annuity. These documents are not governed by your will and revocable trust—the beneficiary designation controls. These should be coordinated with the rest of your estate plan.

Contact Claire at 908-598-1717 or ctoth@ptview.com for more information.

Planning Considerations for Concentrated Stock Positions

Gregory D. Sawicki, CFP™, CPA, PFS

Corporate executives frequently face the challenge of managing a concentrated stock position. While a large single stock position is often the source of great wealth creation, it brings with it a unique set of challenges. Often the largest concern is portfolio diversification. When a single stock position makes up a large percentage of your total investment portfolio, volatility or swings in the stock's price can have dramatic financial effects. If your current income depends on the same company, then you are doubly exposed. This article identifies some of the unique considerations and presents several planning strategies to manage these positions.

How you accumulated the concentrated stock holding usually effects the strategy used to manage the position. A corporate executive's compensation can include stock options and other stock awards, along with purchases in an employee stock purchase plan. Concentrated positions may be acquired when inheriting a large holding, selling a private business, founding a company that subsequently goes public, or benefitting from price appreciation and repeated stock splits over the years. However you came about the stock position, your current financial goals and your time frame are key components when devising a planning strategy.

Sell your shares

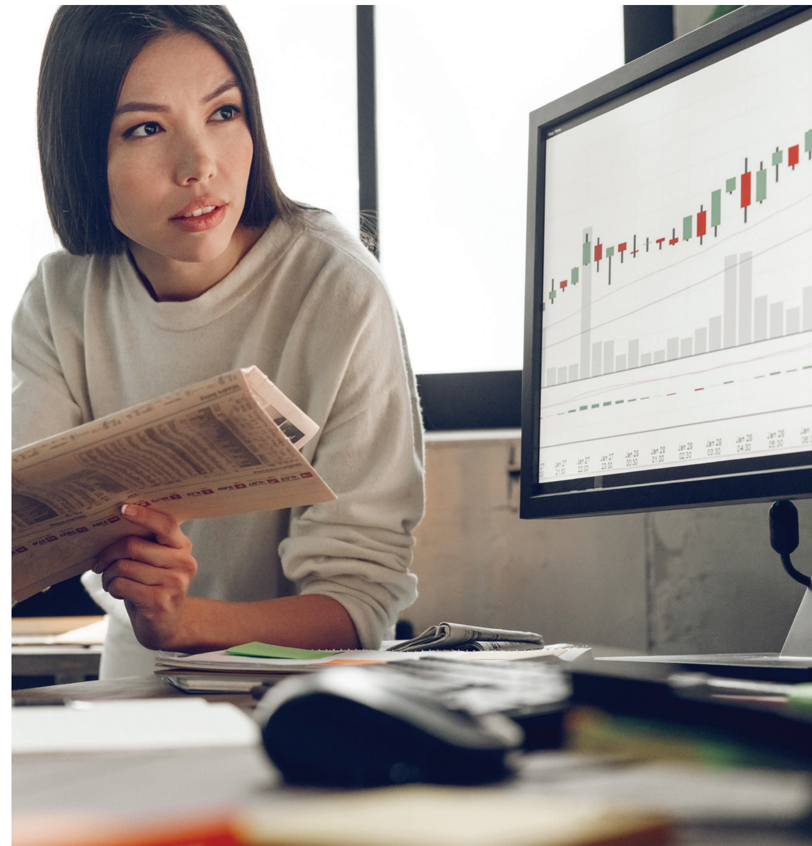
Selling the stock frees up funds to be used elsewhere, including to purchase other securities that will help diversify your portfolio. However, if you have a low cost basis, the sale will generate taxable capital gains. Long-term capital gains (stock held for longer than one year) are taxed at preferential rates, but the tax bite is often still substantial. You may consider a plan to sell the stock over time, which helps manage the tax situation and allows the participation of future growth. Consider your life expectancy. Stock you own when you pass is stepped up in cost basis, reducing or eliminating capital gains tax for your heirs.

Hedge your position

If you want to retain your stock but would like to protect yourself against a short-term drop in value, a hedging strategy using options may prove useful. Using options contains risks in itself; they are not suitable for all investors. There are also tax implications to consider.

Buying a protective put essentially places a floor under the value of your shares by giving you the right to sell at a predetermined price. A purchased put option that can be exercised at a price lower than your stock's market value can help limit potential losses while allowing you to continue to participate in possible appreciation and dividends paid. However, the cost is the money paid for the option, which you lose if the stock remains above the put's strike price. Another consideration is the liquidity (or ability to sell) of the options contract. Options contracts purchased on a thinly traded company may prove difficult to sell should you choose to get out of your contract.

A second options strategy that provides for additional income from your holdings is called a covered call strategy. By selling calls, you are agreeing to sell your shares to another investor at the call's strike price, which is likely to happen if the stock's price rises above the strike price. This strategy limits the extent to which you benefit from the stock's price appreciation and still exposes you to downside risks. Also, if the price reaches the call's strike price and you sell your shares, a capital gains tax is triggered based on your basis in the stock and the sale price.



Finally, a more complex options strategy involves buying a protective put to limit your losses while also selling call options. Because both the upside and the downside are potentially limited, this strategy is called a "collar". The premium from the call selling helps offset the cost associated with buying the put. The benefit is that you essentially lock in a range of the stock's value for a period of time. Still, there are inherent risks and special care must be taken when executing on this strategy. For example, if this hedging strategy eliminates most of the price risk in holding the stock (strike prices on the put and call are too close together or too close to the market price of the stock holding), the collar violates tax rules and is deemed a so-called constructive sale generating capital gains tax.

Exchange your shares

Another useful strategy is to trade your highly appreciated concentrated stock position for an interest in a private placement limited partnership called an Exchange Fund. The manager of the Exchange Fund pools your shares with those contributed by other investors, and your new ownership is in a diversified pool of assets. The transfer is not considered taxable under current tax law. This strategy mitigates the concentrated stocks price risk by diversifying your holding. Your cost basis is also carried over to the new pool of assets. Taxes are postponed until you redeem/sell the shares of your partnership interest. As is the case with most assets, your basis is stepped up should it pass in your estate to your heirs. However, there are a couple of drawbacks. Using an Exchange Fund does not provide for immediate liquidity—there are lockup periods and provisions limiting withdrawals. The IRS also stipulates that a certain amount of the investments in the fund must be more illiquid in nature, so you are not just getting a basket of liquid stocks. Finally, fees associated with the sale and the fund's management should always be considered.

Donate your shares

For philanthropically minded clients, a possible strategy for dealing with a concentrated stock position is to donate a portion of your shares to charity. This eliminates your capital gains tax liability. Depending on your objective, there are numerous ways to make the donation. A donation of appreciated stock directly to a charity, to a private foundation, or to a donor-advised fund is a powerful tax planning strategy as it removes the asset from your portfolio without realizing capital gains, creates a charitable deduction at the fair market level, and eliminates the asset from a taxable estate. There are limitations on the amounts that can be donated and deducted so you should seek tax counsel prior to making the donation.

A possible strategy is to donate a portion of your shares to charity.

There are additional charitable strategies involving the use of trusts. One provides for an income stream to you during your life and a remainder interest to charity at the end of a stated term. This vehicle is called a charitable remainder trust. A second, named a charitable lead trust, in many ways is the exact opposite. It provides the charity an income stream for a specified time; the remainder goes to your beneficiaries.

Determining the best strategy for managing a concentrated stock position, including the investment, tax, and legal issues can be a daunting task. Consider the entire range to choices to determine what is best for you.

Contact Greg at 908-719-4323 or gsawicki@wmcnj.com for more information.

Thinking of moving to Florida?

Lisa McKnight, MBA, CFP™

Have you visited Florida lately? Did the warm climate, outdoor activities and greater exposure to natural light tempt you into contemplating a permanent move? Did you know that there are also substantial tax advantages to be gained from permanently relocating from the Northeast? Florida has no state income tax, (versus a top rate of 8.97% in New Jersey and 8.82% in New York) so becoming a Florida resident could potentially eliminate or significantly reduce income tax. Additionally, Florida has no gift, estate or inheritance tax. This makes moving to Florida particularly attractive for individuals looking to escape the high cost of living, high state and property taxes and estate taxes in New York.

Simply buying a house or renting an apartment and spending more than 183 days a year in Florida is not enough. You must change your domicile. Changing your domicile, particularly when the intent is to also maintain a residence in the Northeast, is a serious undertaking and must be thoroughly planned and reviewed. Careful, thought out attention is needed to avoid an audit. Unfortunately, states with an income tax are becoming more vigilant about verification of residency. New York and New Jersey devote substantial resources to their residency audit program. If you are subject to a domicile audit, the burden of proof will be on you.

Your domicile is the place where you live with the intention that it will be your permanent residence for an indefinite period. It determines what state you must pay taxes to, and it can make you eligible for state programs and benefits. But what happens if you have more than one home? If your time is spent in Florida and one or more other states during the year, you must choose one state and clearly indicate your choice of domicile by establishing key relationships to and with that state. You should be able to persuade your former state of domicile that you have, in fact, abandoned your domicile in that state and that you've established your new domicile in Florida.

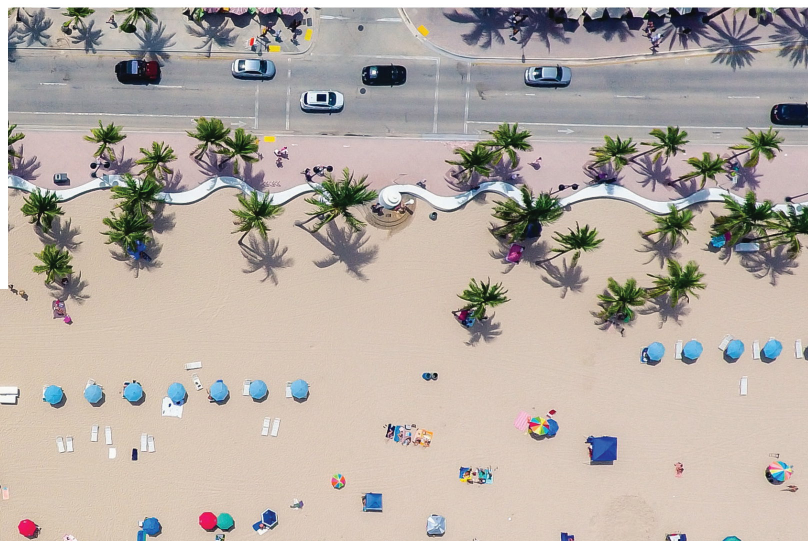
There are no set residency requirements to become a Florida resident. A court would consider a variety of factors proving your intent to live in Florida. Some guidelines and action steps to consider for establishing a new domicile in Florida are:

- Purchase or rent a home in your new state and file a change of address form with U.S. post office.
- Sell your New Jersey residence. If you wish to visit; rent or spend time with family or if need be, purchase a smaller residence than your current home in your new state.
- Maintain a detailed log of where you are; travel itineraries/receipts, etc. This information would be used as evidence to support where you have spent your time. You must spend fewer than 183 days per year in your former state to be considered a "non-resident."
- Consider when and where your primary credit cards are being used. Credit card charges are a prima facie evidence of where you have been, when and for how long.
- Establish a presence in your new state: join clubs, places of worship and professional affiliations.
- Move items that are near and dear to you: family photos, artwork, etc.
- Develop business connections and have active business involvement.
- Open bank accounts in your new state.
- Have important documents transferred to your new address such as insurance, memberships, professional licenses, etc.
- Obtain a driver's license and surrender your old license.
- Register your car in your new state.
- Register to vote in Florida. Remove your name from the voting registry in your former state.
- Establish relationships with medical professionals.
- Purchase a burial plot in your new state.
- If you purchase a home in Florida, apply for the Florida homestead exemption which will also provide real estate tax benefits and additional asset protection.

Prior to Filing Your Next Tax Return:

- File a Declaration of Domicile provided by the County Clerk of the county to which you are moving. Each county generally makes the form available on its website. Additionally, mail a copy of the declaration to the tax department in your former state.
- Declare Florida as your domicile and the situs for all trusts in all estate planning documents (wills, trusts, powers of attorney, advanced medical directives, etc.) A visit to an attorney licensed in Florida to make sure your documents conform to current laws is also advisable.
- Previous State Taxes: If your previous state had an income tax, file a final tax return as a part-year resident through the day you moved. If you earn income in your previous state, file as a non-resident tax return using your new address.
- Federal Income Taxes: File federal income tax returns using your new address.
- If you maintain properties in multiple states, there are additional tax considerations to discuss with your tax professional.

You certainly need not do every single item listed. However the more you do, the stronger your case for having changed residence. Dual residence is not possible, and it generally it will be necessary to sever ties to your former domicile. It will be difficult to prove that you have changed domicile from New Jersey or New York to another state if you still own your former residence and continue to engage in significant business, professional and social activities here. The situation can get complicated if you plan on maintaining those ties. It is highly recommended that you meet with an estate planning attorney to ensure that all your specific situations are covered.



Contact Lisa at 908-646-0102 or lisa@lassuswherley.com for more information.

Time to Save for College!

Cynthia Aiken, MBA, CFP™

New baby, new family member, new life… Very exciting time for you and your family! And a perfect time to start thinking about paying for college! Yes, having a newborn or toddler is the ideal time to start the college funding process. By the time your new baby is ready to rocket off to college, the average cost of a four-year private education could be over $300,000, according to Wealthfront research. Although this figure may seem exorbitant, and your baby's entrance into college feels eons away – starting early gives your savings time to grow.

However, don't be deterred if your child is now walking, in preschool, grade school or even high school, because any time is a good time to establish a savings plan for educational expenses.

Due to their superior tax benefits and flexibility, many Financial Planners recommend **529 plans** as the preferred way to save for college for these key reasons:

- **Tax advantages** – Earnings in the account grow tax-free and withdrawals are tax-free if they are used for qualified educational expenses. Some states provide income tax deductions for 529 contributions. No annual tax reporting is required – your contributions are not reported on your federal return and contributions of $15,000 or less do not need to be reported.

- **Control** – The individual establishing the 529 plan is the owner and the student is the beneficiary. The owner maintains control over investment decisions, beneficiary changes and timing and amount of withdrawals.

- **Flexibility** – There are no income, age or annual contribution limits. Lifetime contribution limits are high but vary by state from $235,000 to $529,000. If the plan beneficiary decides not to go to college, the plan owner can change the beneficiary.
- **Low maintenance and professional investment management** – Although you can manage the investments in the account yourself, typically, 529 plans are professionally managed, and the investments are adjusted as the student ages.
- **Can be used for K-12, too** – A recent tax law change permits the withdrawal of up to $10,000 per year, tax and penalty-free, for tuition at public, private, or religious elementary or secondary schools.

Which **529 plan** should you use? As noted above, some states provide income tax incentives for 529 plan contributions, often with emphasis on their state plan. Check to see if there are tax benefits to residents who contribute to in-state or out-of-state 529 plans in your home state. If there is no tax related reason to use a plan in your state, then feel free to consider any state plan. Only a few plans have state residency requirements for the owner and/or beneficiary. As you compare plans note:

- Investment options – age-based allocations, different risk options, self-managing options
- Plan performance over one, three, five-year time frames
- Fees and expenses – annual account fees, ongoing management fees and asset management fees

Which 529 plan should you use?

There are only a few requirements to open a 529 plan account and opening can usually be handled online. The owner must be a US resident, 18 or older, with a US legal and mailing address and a Social Security or tax ID number. The owner keeps control of the funds, makes the investment decisions, and names the beneficiary. The beneficiary can be anyone, of any age, but must have a Social Security or tax ID number. In fact, the owner and beneficiary can be the same person. 529 plans are sponsored by states, state agencies or educational institutions and are typically managed by large mutual fund companies such as Vanguard or Fidelity.

Once the 529 plan account is established, the owner, family members and friends can contribute to the account – weekly, monthly or annually. The funds in the account are invested and grow tax-free. The withdrawals will be tax-free if used for qualified educational expenses such as tuition, mandatory fees, room and board, books, computers and related equipment. Room and board are considered a qualified educational expense if the student is enrolled at least half-time. If the beneficiary lives off campus, the plan can pay those expenses as well, up to the amount the school would charge for room and board.

What if the beneficiary doesn't use the funds? The owner has two choices: change the beneficiary to a qualifying family member of the original beneficiary – including a sibling, child, parent, cousin, aunt/uncle, stepchild, stepsibling, stepparent or, if the owner does not want to change the beneficiary, take a nonqualified withdrawal. Any earnings withdrawn are subject to a 10% federal penalty and federal income taxes. 529 plan withdrawals are done on a pro-rata basis – withdrawals are made up of both contributions and earnings and are proportionate to their percentage of the account. As a result, the portion of the withdrawal made up of contributions will be free of penalties and taxes, but the earnings portion will be subject to the 10% penalty and federal taxes.

There are circumstances when the 10% federal penalty is waived – if the beneficiary receives a tax-free scholarship, attends a United States military academy, dies or becomes disabled.

The IRS treats contributions to a 529 plan account as a gift to the beneficiary for gift tax purposes. The maximum amount allowed to be gifted in 2020 not requiring a gift tax return is $15,000. The IRS permits contributors to front-load a 529 plan for up to five years with no gift tax consequences. Rather than contributing $15,000 for five years, the contributor gives $75,000 in the first year; this is treated as if $15,000 were given for five years. No additional contributions are allowed until five years have elapsed. Together, a couple could contribute $150,000 for this five-year front-loading strategy. By front-loading contributions, the funds in the account will compound more quickly than if regular annual contributions are made, meaning that there will be more funds when your student is ready to start college.

Whether you decide to front-load your 529 plan account or make smaller regular contributions, start saving today. Your baby's future is worth it!

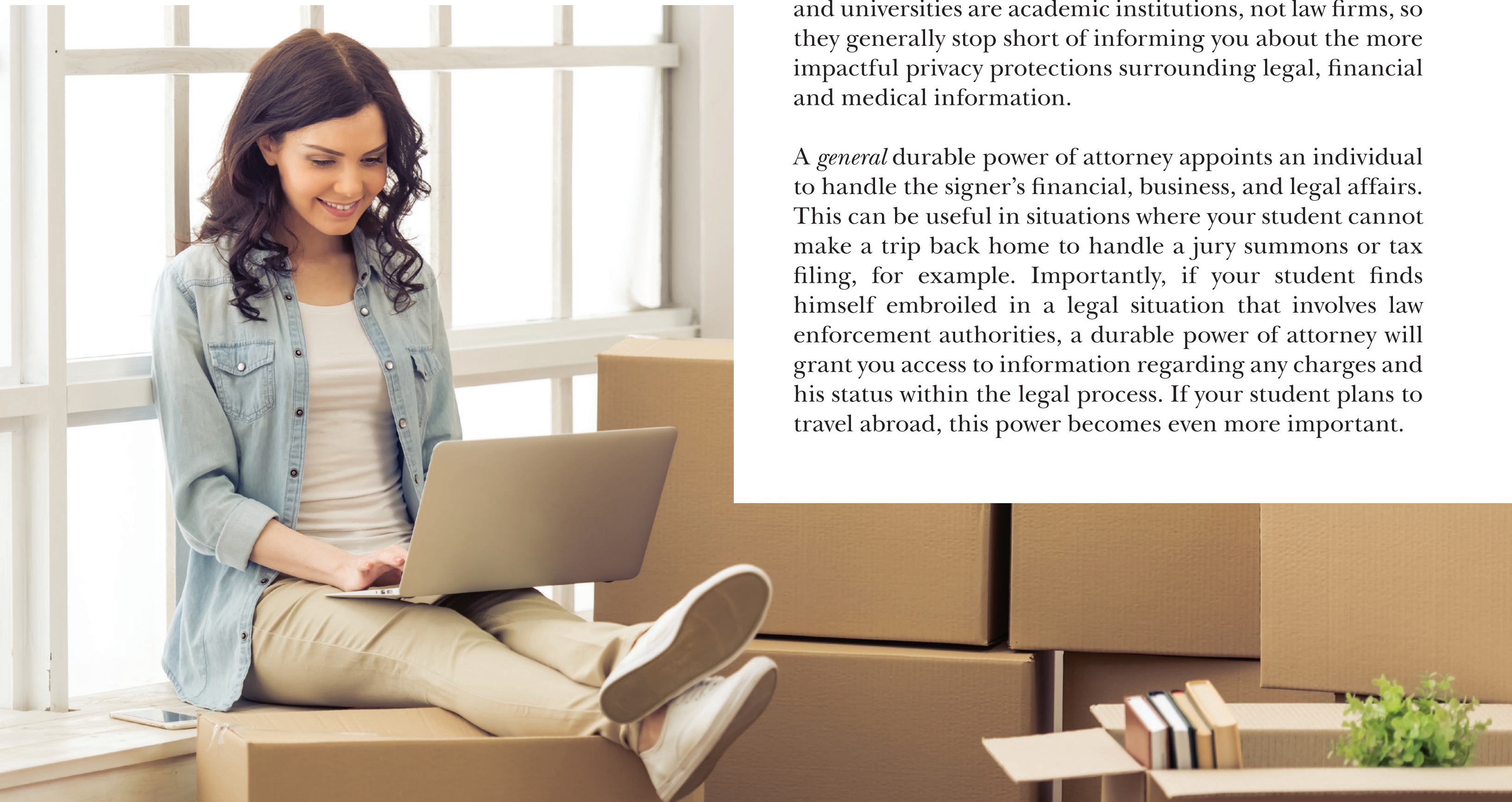
Please contact Cindy at (908) 864-3992 or caiken@pgbank.com with any questions.

Preparing for the College send-off…

Jean McAllister, CFP®

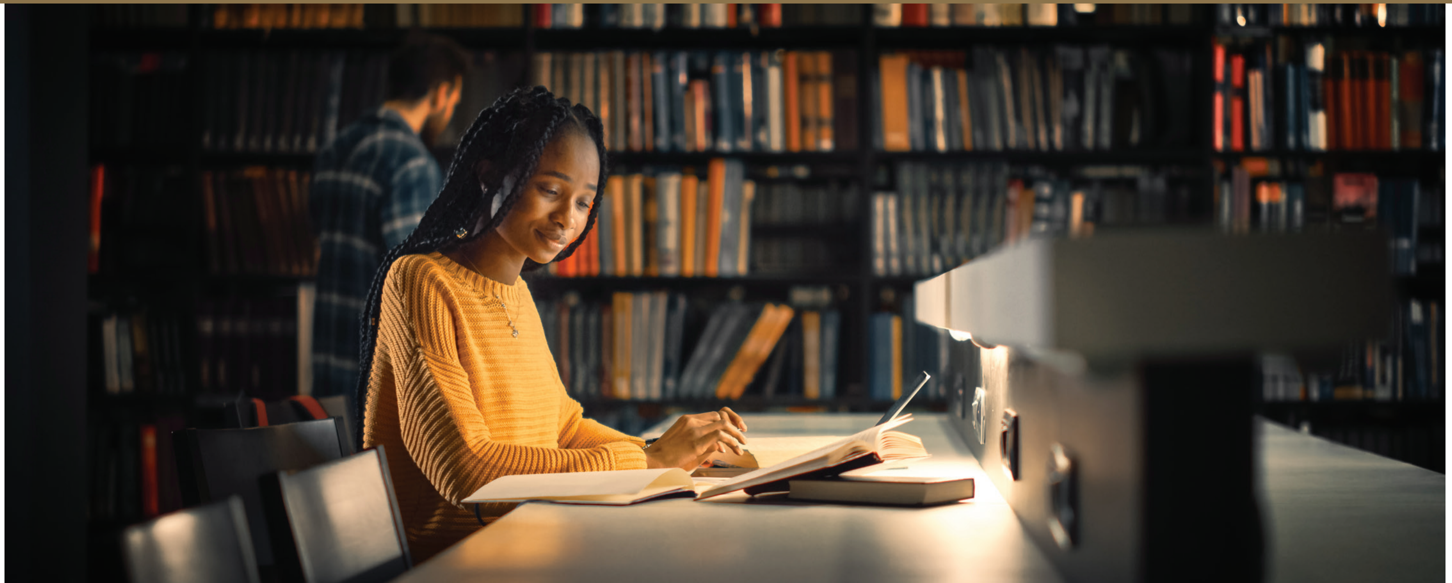
If you have a son or daughter heading off to college over the next several weeks or months you are likely compiling "to-do" lists to ensure your student begins the academic year with all he or she will need. In addition to the wardrobe and dorm room necessities, technology, and money details, consider checking with your estate or family attorney about a durable power of attorney, HIPAA authorization and durable medical power of attorney.

What many parents miss in the big college send-off is the fact that their child is, or will soon become (at age eighteen), a newly-minted, legal adult. You are still the parent paying many of the bills, but you are no longer entitled to access any of your student's personal, protected information regarding legal, financial, or medical records.



Your signature on the check to the Bursar's office does not give you access to details regarding the return on your investment (transcripts/grades). Most colleges forewarn parents by disclosing that they will not receive or have access to a student's transcripts without that student's permission. Students can grant access by signing a Family Educational Rights and Privacy Act (FERPA) waiver. Many colleges provide this waiver, no doubt saving hours of angry phone calls at the Registrar's office. Ask about this on move-in day; it may be available when your student is signing for his dorm room keys. Many schools also have web-based portals where students can grant parents access to transcript and grade information. Consider yourself lucky if this provision is in place and you can insist upon your rights as the financier without too much drama. Your luck stops here regarding an easy, free solution. Colleges and universities are academic institutions, not law firms, so they generally stop short of informing you about the more impactful privacy protections surrounding legal, financial and medical information.

A *general* durable power of attorney appoints an individual to handle the signer's financial, business, and legal affairs. This can be useful in situations where your student cannot make a trip back home to handle a jury summons or tax filing, for example. Importantly, if your student finds himself embroiled in a legal situation that involves law enforcement authorities, a durable power of attorney will grant you access to information regarding any charges and his status within the legal process. If your student plans to travel abroad, this power becomes even more important.



Other urgent matters may hang in the balance once your student is away from home. If your child becomes ill or is injured, you may have no way of knowing unless your child's friends or roommates alert you. When you reach out to a hospital or physician's office for information about your child's condition, you will hit a wall erected by the Health Insurance Portability and Accountability Act (HIPAA). No doubt you've been provided a HIPAA form during a recent doctor's office visit. Medical information is private and protected, unless access is specifically granted by the patient in question.

If your child falls ill or needs medical treatment for any reason, you will only be provided information about her condition, treatment, and prognosis if a HIPAA authorization is in place (and you possess it) or if she is able to grant authorization at the time treatment is needed.

A durable medical or healthcare power of attorney identifies an individual to act as your student's agent for all medical decisions if she cannot make those decisions herself. Without these powers in place, your child's only agent will be her doctors. Parents have no legal right to input on life or death decisions unless granted these powers in advance of an incapacity. Executed before your child leaves home, these documents will enable you to remain informed and involved before during and after treatment, just as you did before her 18th birthday.

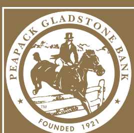
Your student's school should be provided with executed copies of all these documents. If your student first seeks medical treatment through her school's health services clinic, it is likely that office will be made aware of your child's hospital admission. Likewise, if your student runs into any entanglement with local law enforcement, campus police are often apprised. If your child's powers are on file with their university, school authorities may reach out to you in the early stages of whatever issues arise.

Executing these documents requires the agreement of your son or daughter – they are the signatories granting the powers and authorizations on each of these documents and they will be considered the client of any attorney you contact to have these documents drafted. It is important that your child recognizes the need for granting these powers and the gravity of the situations that may come to pass requiring their use.

As the holders of these powers, it is important for parents to recognize that laws and legal process can vary state to state; so be sure to discuss with your legal counsel how and when these documents should be presented.

Finally, execute several copies of these documents, as you can expect to be the holder of these powers until your student has a spouse or significant other to whom they may wish to transfer power and authority.

Contact Jean at (973) 276-0839 or jmcallister@pgbank.com for more information.



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