IN THIS ISSUE

Retirement plaanning

Critical questions in planning for incapacity

The critical issue for living wills

Retirement plan changes in 2025

Tax currents

Tax burden distribution

Trust Topics

First State Bank & Trust

January 2025

Critical questions in planning for incapacity

What must one do upon an unfortunate medical diagnosis that suggests one will lose mental and physical abilities in the near term? Areas that need addressing are wills, health care preferences, long-term care preferences and substituted decision-making.

Health care at the end of life

Typically, we expect heroic medical procedures for those who have a long and productive life ahead of them. The specter of incapacity may change this calculus for many. How aggressive should medical treatments be? Are there treatments that should be avoided?

What about a durable power of attorney for health care decisions? Who should be the power holder? The power will need to comply with the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

An *advance medical directive* (sometimes called a *living will*) is also advisable for setting out expectations for medical treatment. What artificial means of extending life should be used? What should be avoided? These issues need to be discussed with family members to minimize future misunderstandings and conflicts. (See "The critical issue for living wills" on page 2 for more on this planning aspect.)

Long-term care

A diagnosis of impending incapacity makes the need for planning for long-term care more urgent. The first step is to determine how long one may be able to stay in the home. Does the design of the house present obstacles to remaining there? Can they be fixed?

Who will provide the long-term care? Most such care is provided without charge by family members, such as a spouse or adult children. However, as dementia sets in, professional help may be required.

Will income be sufficient to cover the costs of a nursing home? Is long-term care insurance part of this picture? The analysis can be daunting. If the income will not be sufficient, a plan may be needed for the orderly liquidation of assets to cover those costs.

Continued on next page

Estate planning

Usually, estate planning involves a substantial amount of guesswork and ambiguity. How far into the future will it be before the plan is needed? What family circumstances might change in the interim? What will the assets be? What will the tax laws be like?

Many of these uncertainties may be swept away when one is on the verge of incapacity, because this could be the final review of testamentary documents—the last chance to amend them to implement one's intent. Beneficiaries need to be reviewed.

A statement of intent in the will or trust is advisable, to aid in the understanding of that intent.

For example, "health, education, maintenance and support" is a routine standard for distributions to beneficiaries. What does that phrase actually mean? Does it take into account other assets that the beneficiary may have?

This is also a good time to determine if any of the probable beneficiaries has a disability. If so, care needs to be taken so that their inheritance does not compromise their access to government benefits.

Revocable living trusts

A revocable living trust is a superior tool for asset management in case of incapacity, because a trustee will typically have an easier time dealing with brokers and banks than would an attorney-in-fact. The trust document also needs to be reviewed carefully if an onset of incapacity is expected.

For example, does one want to empower the trustee to make distributions to heirs before death? Or is the trust to be for the sole benefit of oneself and perhaps one's spouse? The trust needs to be crystal clear on this point.

If individuals will serve as trustee instead of a corporate trustee, when should *they* be removed for incapacity? What standard should be used? Should the opinion of a physician be required?

Consideration should be given to granting someone the power to amend the trust after incapacity sets in. This might be the trustee, a trust protector, or the attorney-in-fact. If more than one person is granted the power, there should be a hierarchy of priority and a process for resolving conflicts.

Substituted decision-making

Who will make decisions when one loses the capacity to do so? For asset management, the trustee of a living trust may handle those duties. For legal, medical and personal issues, the durable power of attorney will be used. In general, a family member will be given this responsibility.

Should the power of attorney include the power to make gifts? If so, how broad should the power to make gifts be? Should the class of recipients be limited or unlimited?

One reason for having a living trust and/or a durable power of attorney is to avoid the need to have a guardian or conservator appointed. However, it sometimes develops that as capacity declines, a person makes harmful decisions, placing himself or herself in danger, and may need to have the ability to make such decisions legally removed. Consider including language in the durable power of attorney nominating the attorney-in-fact to be named as guardian, simplifying the process.

These are difficult decisions, but they must be faced. ☐

The critical issue for living wills

This story is true, as reported in *The Wall Street Journal* ("She Signed a Living Will. Her Sister Didn't Honor It," November 24, 2024).

Lynne Chesley signed a living will (sometimes called an *advance medical directive*) in 2013 that stated she did not want to have her life extended by artificial means. Among other things, that would mean no feeding tubes. Lynne designated her sister, Amy, as her proxy for making medical decisions should Lynne become incapacitated.

In 2021, Lynne was hospitalized with pneumonia, and a feeding tube was inserted. Her children asked that the tube be removed, consistent with the directive that Lynne had executed. Amy disagreed. Amy said, in a related case, "I don't believe in killing someone before they are ready to die." She claimed that when Lynne was told the removal of the tube would be painful, Lynne made movements, and these movements amounted to a revocation of the living will and a request to keep the feeding tube in place.

A *three-year* court fight followed. Ultimately, the Oklahoma Supreme Court sided with the children, held that the living will must be honored, and Lynne was allowed to die.

Did Lynne ever discuss her living will with Amy? Did Amy candidly share her beliefs? What was Lynne's quality of life during the litigation? This case suggests that there was a real failure of communication.

Having a living will and designating someone for making medical decisions has become a normal element of estate planning. Some people will want to take all possible steps to extend their lives; others prefer to keep medical intervention at the end of life to a minimum. A living will is essential for providing guidance. Equally important, a serious conversation is necessary with the person who will be designated to make medical decisions. Does the person understand and agree with the wishes? Will the person be able to carry them out?

© 2025 M.A. Co. All rights reserved.

Retirement plan changes in 2025

Some of the changes to retirement plans made by the SECURE Act 2.0 had delayed fuses on them and are only now going into effect.

Automatic enrollment in 401(k) plans

The 401(k) plan has generally proven popular with employees, but perhaps not popular enough. Under the old law, an employee had to take action to participate in such a plan. For plans established on or after December 29, 2022, employee enrollment must be automatic, the default choice. Initial deferral percentages must be at least 3% of covered wages, but not more than 10%. The deferral rate must increase by 1% per year, easing the employee into a gradually increasing savings rate, until the deferral is at least 10% but not more than 15%.

However, this change in the law does *not* make participation in a 401(k) plan mandatory. Each employee is free to change the deferral rate, including to a rate of zero. If there is an employer match, the employee would be wise to defer at least as much as is required for a maximum matching contribution.

Higher contribution limits for pre-retirees

For those who failed to save for their retirement early in their careers, the tax code has long permitted age-based "catch-up" contributions to IRAs and 401(k)s. The SECURE Act 2.0 established an even bigger 401(k) catch-up for those who are 60, 61, 62, and 63—a bonus contribution of $3,750. The change has taken effect for the 2025 tax year.

The table below shows the age-based 401(k) contribution limits for 2025 after inflation is taken into account.

401(k) contribution limits

Age at year-end	2024 limit	2025 limit	Increase
Under 50	$23,000	$23,500	$500
50-59	$30,500	$31,000	$500
60-63	$30,500	$34,750	$4,250
64 and older	$30,500	$31,000	$500

Source: IR 2024-285

The supersized limit does not apply to IRAs. The 2025 limit for deductible IRA contributions will be $7,000, with a catch-up allowance of $1,000 for taxpayers ages 50 and older. The IRA catch-up will be indexed for inflation in the future.

Although the added incentive to boost savings just before retirement begins is welcome, it's not something to rely upon. Putting more money into a 401(k) plan early in one's career, starting in one's 30s or even 40s, will do far more for retirement financial security than larger contributions late in the earning years. Earlier contributions have the benefit of many more years of compounding growth.

401(k) lost and found

The Department of Labor (DOL) was directed by the SECURE Act 2.0 to establish a Retirement Savings Lost and Found online searchable database, to be available to the public by December 29, 2024. DOL worked with the IRS and the Social Security Administration to populate the database, and last November a request was made to plan sponsors for assistance. Information to be collected from plan administrators includes details about the plan and plan administrator, along with names and Social Security numbers of separated vested participants who have reached age 65 and are owed vested benefits, including deceased participants who would have been age 65 or older if they had survived and whose beneficiary is entitled to a benefit. Participation in the program by plan sponsors is voluntary.

According to one estimate, there are about 29 million "orphaned" or forgotten 401(k) accounts, holding an estimated $1.65 trillion. Over time, it is hoped that the availability of the database will restore these retirement resources to their rightful owners. ☐

Tax burden distribution

A recent report by the Tax Foundation sheds some interesting light on the distribution of the tax burden in the United States. Among their findings, based upon IRS data for 2022 (most recent available):

- The top 1% of taxpayers, those with income above $663,164, paid 40% of the total income tax. Of course, those with the most income pay the most tax, but in the case of the 1%, their share of the income tax burden was almost double their share of the national income, which was 22%.
- The top 10% of taxpayers provided 72% of income tax revenue, while they earned 49% of the national income. These are taxpayers with incomes above $178,611.
- The bottom 50% of taxpayers, nearly 77 million taxpayers with income less than $50,339, together paid only 3% of the income taxes collected by the IRS. The report notes that arguably they paid even less than this percentage, because refundable tax credits are treated as spending rather than lost tax collections.
- The bottom 50% had an average tax rate of 3.7%, while the average tax rate for the top 1% was 26.1%. The table below show average tax rates for other groups.

Taxpayer group	Average tax rate
Top 1%	26.1%
5% to 1%	18.8%
10% to 5%	14.3%
25% to 10%	10.7%
50% to 25%	7.7%
Bottom 50%	3.7%

Source: https://taxfoundation.org/data/all/federal/latest-federal-income-tax-data-2025/

Additional considerations

The Tax Foundation study did not take Social Security taxes into account, which the bottom 50% must pay on their wages. Including FICA taxes—and attributing the employer share of FICA to the employee—would bring average federal tax burden of the bottom 50% much closer to 20%. The top 10% of taxpayers have earnings in excess of the taxable wage base.

Having a high income in a particular year and being wealthy are two very different things. A retiree might have several million dollars in assets yet take only a modest amount of income each year to meet living requirements, depending upon whether his or her portfolio is invested for income or for growth.

The question of a "fair share" in taxation is a political one. When the debate turns to whether billionaires are paying their "fair share," an important element is the increase in the value of their stock holdings. Such increases are not taxable until the asset is sold, and the gain "realized," under current tax law. The amount of such gain is uncertain, and stock values fluctuate from year to year. They go down as well as up, so the amount of the taxable gain is fixed only when the shares are finally sold. ☐

Portrait of a busy business owner?

One of those notes should be "See my estate planner."

Talk to us about the nontax benefits of estate planning for business owners and professionals—and how we can help.

First State Bank & Trust | Growing Relationships Locally

Trust Department
PO Box 1827
310 1st Ave East
Williston, ND 58802-1827

We believe in sensible, responsible asset management tailored to your needs. Call us today for a no-cost, no-obligation consultation.

(833) 577-9618