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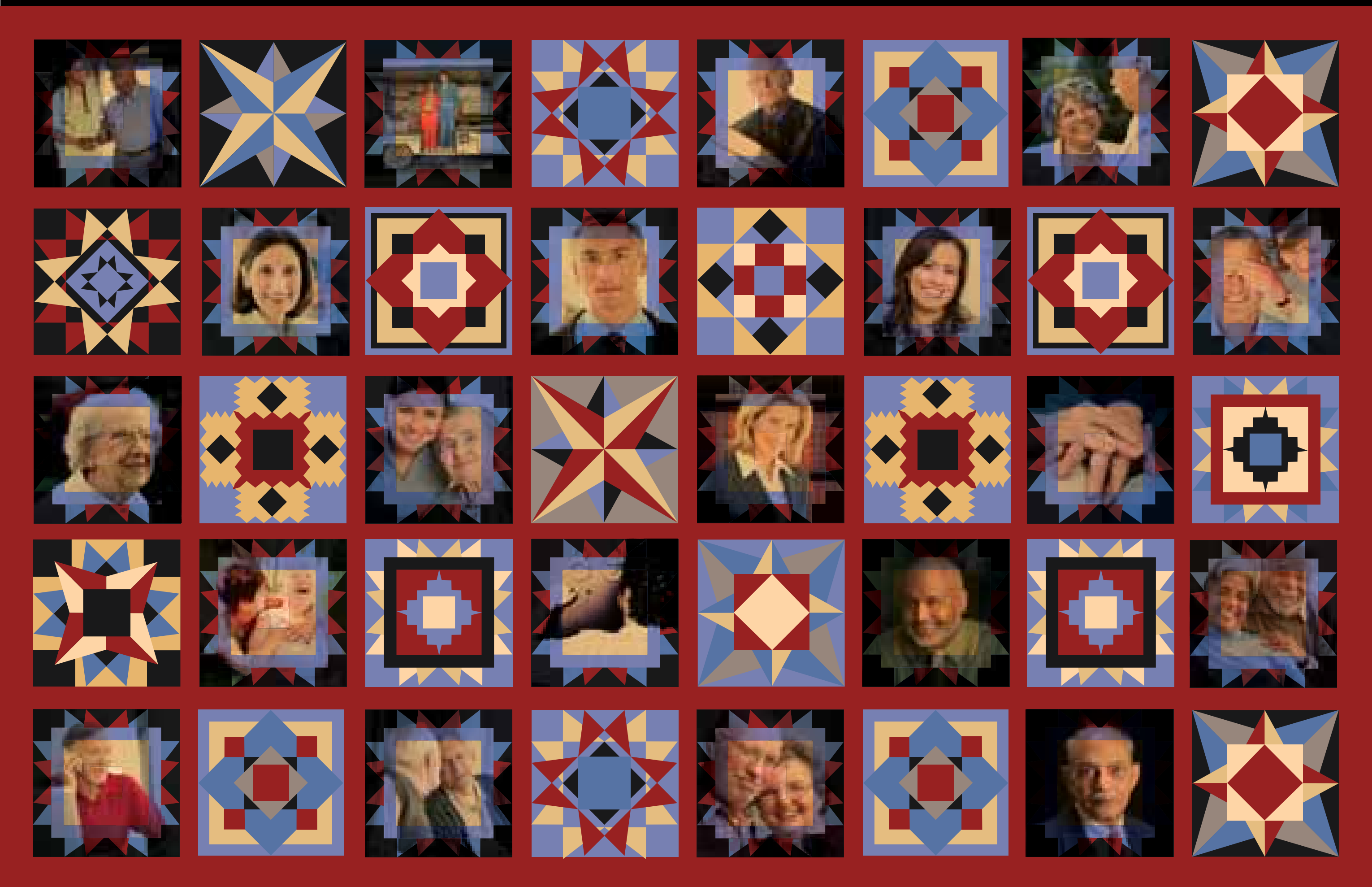

Are You Prepared for the Elder Years?

A special issue for attorneys, their loved ones and their clients

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Retirement: The End or the Beginning?

By Walter T. Burke and Timothy E. Casserly

"Few men of action have been able to make a graceful exit at the appropriate time."
– Malcolm Muggeridge

Few aspects of an attorney's life engender such yearning and such fear as the prospect of retirement. Does retirement mean doing whatever you want to do – having unlimited choices – or does it condemn you to being just another nameless, faceless, universally ignored person standing in the coffee line at Starbucks?

What would life be like without the dark suit that projects our image, identifies us in the social structure, and provides our income? Can I afford (financially) to take off the suit? The following article reviews some items that every attorney should review when contemplating retirement, be it a near or a distant event.

Financial Aspects

"You can be young without money but you can't be old without it." – Tennessee Williams

The almost universal question clients have when planning for their retirement is, How much money do I need to have in order to retire? The better approach for planning is to determine what a realistic budget is for yourself and your family and then from that determine the number that you need. Due to lifestyle and geographic variations, coming up with an absolute number for the amount needed for retirement is a futile effort. However, if it is determined that a particular client realistically needs X thousand dollars per month for the balance of life, that becomes a number that can be worked on, projected, and a goal established. Some clients are very happy with a modest amount of money coming in every month – which more than satisfies their needs. Others find that a net after-tax income of $600,000 or more is inadequate. Where you fall in this spectrum is very subjective, but it does determine how much money you need to retire. Unfortunately, there is no short cut or magic to it, and picking numbers out of the air – such as $1 million or $5 million – does not in any way aid in any relevant retirement planning. Yes, more is better, but more is not better if you have to spend more years doing something you do not like. This is especially the case when you could have had many more years of happiness and satisfaction doing something for reasons other than generating needless income.

The Roman philosopher Seneca once remarked, "Our plans miscarry because they have no aim. When a man does not know what harbor he is making for, no wind is the right wind." A successful retirement plan requires just that – a plan. Putting it off, delaying it, ignoring it, jumping into it, any one or all of the above can lead to a retirement disaster. Most lawyers do not wake up one morning and decide that they are going to go out and buy a house. If you have a child, you do not wait until the child is age 18 to consider that you may need money to pay for the child's college education. Why would you not spend time and effort planning something that will affect you for the balance of your life? Yes, there are many variables, and yes it is difficult. But that's no reason not to do it. Once you have a plan that suits your individual needs and an intelligent estimate of the financial assets that you will require to meet those needs, then you can address some of the issues of retirement planning such as: Do I take early retirement? Do I work an extra two years? When should I elect to take Social Security? Do I work part-time? Or: Should my spouse continue to work? You may not necessarily like what you see in the plan, but at least you'll have a plan.

For many attorneys, the retirement years offer additional options for tax planning, particularly in how and when to withdraw and/or liquidate certain assets for cashflow needs. When you work, all of your income is taxable in one form or another. However, in retirement you often have multiple sources of income with varying tax consequences, including pension, Social Security, drawing down of after-tax savings, partial distributions from various tax-sheltered annuities, appreciated assets, IRAs, and deferred compensation.

Income taxation is not an area where experimentation and self-help is very profitable. If during your career you successfully managed taxes, understood them and enjoyed doing them, then fine. For the vast majority of attorneys who do not participate in that strange exercise, they should retain a very good CPA or Certified Financial Planner because retirement planning is a dynamic process. Meet with your advisor not only before you retire, but several months after you retire, and subsequently in the fall of every year as well. It is at these points that you can modify the plan, make whatever adjustments may be necessary, and understand where your tax exposure may be. Meeting with your accountant only in April is simply an exercise in memorializing your mistakes.

Wall Street and You

Just as there is no magic dollar amount for a successful financial retirement, there is no universal investment mix that works perfectly for every retiree. What is clear is that extremes – extremely conservative or all risk – do not work well. The balance of investment products that you select will be based on multiple factors including your knowledge of investments, your comfort level, your tolerance of risk, and your need for growth to protect against inflation and provide longevity for your accounts. The last time CDs were a rock-solid retirement investment was when Jimmy Carter was president – six-month CDs were paying 14% and money markets were paying 8%.

> "Our plans miscarry because they have no aim. When a man does not know what harbor he is making for, no wind is the right wind."

Despite the Great Depression, the tech stock boom and bust, the real estate crash, and the 2008 debacle, a diversified portfolio of stocks and bonds has proven to be the most reliable method of retirement investing. If you are not familiar with this type of investment, now would be a good time to talk to friends and colleagues and get some professional help. Being a good attorney does not make you a good investor.

Taxes

Many attorneys have acquired a variety of assets in different retirement plans over the years: IRAs, Keoghs, Simple Plans, 401(k)s and quite possibly a defined contribution plan from an employer. These plans all have one thing in common: Beginning at age 70½, there are required minimum distributions and all proceeds taken out are taxed as ordinary income regardless of their source. This is based on life expectancy; in the first several years of required minimum distributions, the distributions relative to the principal are relatively modest. However, as one gets older, the minimum distribution requirement increases regardless of whether you are using the money. Therefore, you should look to balance the required minimum distributions and, quite possibly, take out additional moneys even though not immediately needed to avoid being forced to take out disproportionally larger amounts later in life, therefore paying additional taxes.

You should also balance the types of investments you have in your retirement plan with what you have in your after-tax savings. Capital gains tax at 15% from your equities is attractive in your taxable savings, however, capital gains in your retirement plan simply come out as ordinary income. For the same reason, you should never have tax-free income in a retirement plan.

Retirement Projections

One of the biggest causes of anxiety and frustration about retirement planning is the use of retirement projection calculators, which are offered on multiple websites. Depending upon the assumptions made for rate of return, as well as the inflation factor, these projections can take the same amount of money and predict that you will be wealthy beyond your dreams or destined to live in abject poverty. While these projections can be very helpful, they can also lead to a badly skewed prediction of your future financial health.

Look at the rate of return in terms of your own portfolio, that is how your assets are allocated, and to some extent use a historical perspective on how those assets have performed over time. While history is no guarantee, it can be somewhat representative of what is likely to happen over a period of 20-plus years.

With regard to inflation, while all of us are paying $4 a gallon for gas (as opposed to the $1.25 we all remember), many attorneys close to retirement have either satisfied their mortgage or have locked in favorably low permanent rates, have already paid for their children's education, and are not buried in credit card debt. These are the three greatest sources of the huge debt that inflation exacerbates. If you are not burdened by them, then the danger of inflation is greatly diminished. With regard to the $4 per gallon for gas, think about investing in the oil companies.

Resources

Books of Interest

Sarina Butler and Richard Paszkiet, The Lawyer's Guide to Buying, Selling, Merging, and Closing a Law Practice (ABA 2007).

David D. Corbett and Richard Higgins, Portfolio Life: The New Path to Work, Purpose, and Passion After 50 (2006).

Marc Freedman, Prime Time: How Baby Boomers Will Revolutionize Retirement and Transform America (2002).

Herminia Ibarra, Working Identity: Unconventional Strategies for Reinventing Your Career (2003).

Pamela D. Blair, The Next Fifty Years: A Guide for Women at Mid-Life and Beyond (2005).

William Sadler and James Krefft, Changing Course: Navigating Life After Fifty (2007).

Web Sites of Interest

www.go60.com
www.retirement-cafe.com
www.retiredbrains.com
www.retirementlifestyle.com

Volunteerism

volunteerattorneys@nycourts.gov
www.americorps.org
www.globalvolunteers.org
http://apps.americanbar.org/lpm/lpt/articles/fin09101.shtml
www.legalservicesnyc.org

Health

www.mayoclinic.com
www.ehealthsites.com
www.webmd.com/healthy-aging

Wealth

www.money.cnn.com/retirement/guide
www.personal.fidelity.com/planning/retirement
www.personal.vanguard.com/us/planningeducation/retirement
www.troweprice.com

Of Particular Interest to Women

www.thetransitionnetwork.org

The Psychology of Retirement

"[Lawyers] intoxicate themselves with work so that they won't see how they really are." – Aldous Huxley

"Habit is habit, and not to be flung out the window by any man, but coaxed downstairs a step at a time." – Mark Twain

The idea of retirement is attractive to some but dreaded or feared by others. Sometimes it is postponed not for financial but for psychological reasons. For many attorneys not retiring is a cloak and a shield from the world to say that they are not changing, not aging and have lost none of their skills.

Yet, we have all seen the sad picture of lawyers who tried to hang on too long. They miss deadlines, are confused at meetings, forget basic elements of a case or argue irrelevant points. Nobody wants to be that person and yet we have all seen that person. If it is not finances, then what drives people to become the shell of their former professional self? For some it is ego, attorneys who have defined themselves not as people but as attorneys; therefore, to give up the trappings of the office is to give up themselves. For others it is the fear of a challenge late in life. Dr. William Russell has told us, "Leisure is the most challenging responsibility a man can be offered." While leisure can be attractive for a weekend or a week, the prospect of a lifetime of leisure forces us to new and different challenges and a new variety of choices. For those who have spent 30 or 40 or more years doing the same, often satisfying work, the prospect of something so new and open-ended is frightening. Couple that fear with the definition of yourself as your profession, and one can easily see why attorneys hang on too long to their briefcases. That is also why during the working years it is so critical for attorneys to cultivate strong family ties and social connections as well as to seek out enjoyable hobbies and meaningful work that is not tied to revenue or necessarily the profession. This is not something that is done overnight or within two months of a planned retirement date.

For some attorneys the road is simple: You keep on working because if you don't you will get sick and you will die. While we all know individuals who have taken that path, that does not make it a forced march for the rest of us. Often this simplistic view of life post retirement is used to mask the real fear, that of a long-term illness and a protracted stay in a nursing home.

Yet despite these fears often attorneys will studiously ignore basic medical advice and/or the specific direction of their physicians. Rather than giving the appearance of a slight loss of independence, they will drive when it is no longer appropriate for them to drive, maintain the large expensive house when only one or two people live there, and struggle to maintain a house with multiple levels when single-level housing is the most appropriate. These are the exact activities that tend to guarantee that loss of independence and cause the long-term illness. But change is something that they refuse to accept.

In addition to the fear of the debilitating aspects of long-term care, whether it be physical or mental, there is also the fear of its crippling cost. Depending on where you live in New York State, monthly costs of nursing home care can range from a low of $7,000 per month to a high exceeding $16,000 per month. These costs are not covered by Medicare or almost any typical health insurance policy. While long-term care insurance is available, most attorneys do not have it. So whether you are concerned about the physical, mental or the financial aspects of long-term illness, remember two things: (1) there are steps that can be done to minimize the dangers and risks associated with long-term care, and (2) a successful retirement plan will deal with but not dwell on this aspect of retirement.

The End of the Game

As much as we hate to admit it, death comes to all of us. As attorneys we know or should know the importance of estate planning documents. If your individual estate is worth less than $5 million, then you are free from (at least for now) concerns about federal estate tax. If your spouse has similar holdings, then with a modicum of planning $10 million can be passed to the next generation free of federal tax. Please note that New York State is still holding at a $1 million credit line after which state estate tax will be due.

New York State also has a new power of attorney form, which is dramatically different from the prior forms. While the old forms continue to be in effect, as the years go on, third parties such as banks and other financial institutions may no longer accept them so readily.

Your health care proxy (yes, you should have one) should be updated both in terms of your current medical condition as well as the appropriate agents that you have named. Finally, you should have a checklist of important contacts and a list of where vital documents are located. You do not want your legacy to be your loved ones plowing through all of your back records and documents looking for missing investment accounts or an insurance policy. You want your last official act as a lawyer to be smooth, efficient and professional. ■