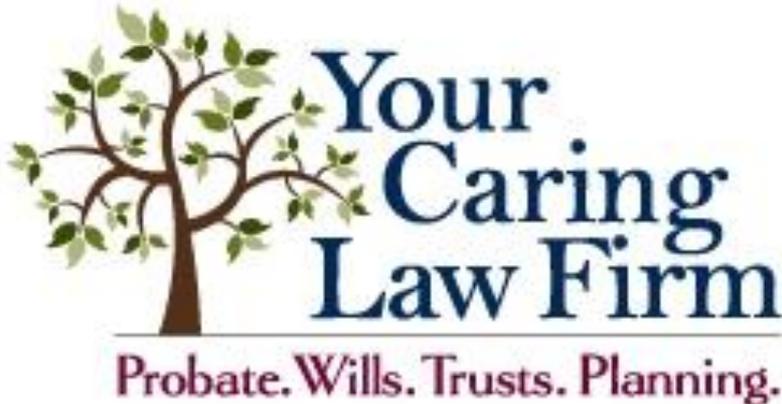


STUCK IN THE MIDDLE WITH YOU

ESTATE PLANNING LESSONS FROM DOWNTON ABBEY

Mary Merrell Bailey Esq. CPA MBA MSTaxation MSAcctg

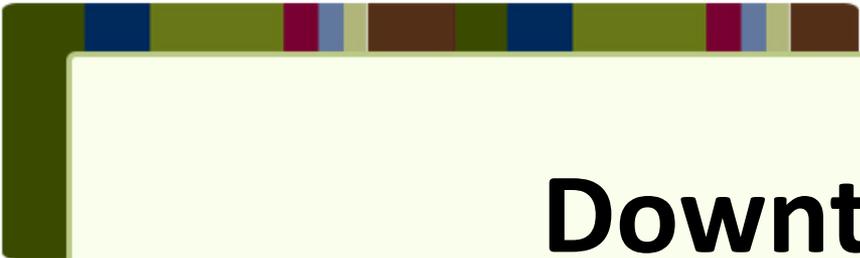


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Downton Abbey





Downton Abbey

- PBS TV (Thanks, UCF!)
- Period drama set in 1912 England
- The extended Crawley family



Downton Abbey is Relevant to You...

How?

- Inheritance and estate planning issues
- Family business succession issues
- Prenuptial agreements
- Asset Protection Planning
- Declaring missing person dead
- Identity theft
- Incapacity
- Unexpected death of a spouse



Downton Abbey is Relevant to You...

How?

- Houseguest died in your home
- Guardianship of a surviving minor child
- Marriage to someone from a different country
- Disagreement over medical care decision maker
- Charitable & non-charitable gifting
- Issues of aging
 - Taking away car keys
 - Cost of assisted living

Lessons from Lady Mary's Father, Robert Crawley, 5th Earl of Grantham



Bankrupted family business – twice
Business Succession Planning Opportunity



5.5M Family Owned Businesses in U.S.

Contribute 57% of the U.S. GDP

Employ 63% of the workforce (FEUSA, 2011)

Create 78% of all new jobs (Astrachan & Shanker, 2003)

35% of Fortune 500 companies are family-controlled.
(Businessweek.com, 2006)

ROA averages a 6.65% greater return than non-family firms
(ffi.org, 2010).

The average life span of a family-owned business is 24 years
(familybusinesscenter.com, 2010).

40% of U.S. family-owned businesses turn into second-generation businesses

13% are passed down successfully to a third generation

3% to a fourth or beyond (Businessweek.com, 2010).

Lessons from Lady Mary's Mother, Countess Cora Crawley



Cash-rich American heiress

Signed pre-nuptial agreement that she didn't understand

Parents could have left her wealth in asset protection trust for her benefit



Prenuptial Agreements

Each side must fully disclose financial position

Each person must be represented by separate counsel

Indicia of duress

Signed too close to wedding date

Significant age or wealth disparity

Asset Protection Trust

Grantor: person who sets up the trust; is responsible for \$ & words (Cora's parents)



Trustee: ongoing paperwork person; administers the trust (may or may not be Cora)

Beneficiary: person on whom Trustee spends the \$ in accordance with the words (Cora, but not Robert)

Lessons from Lady Mary Crawley



Fiancé went down with the Titanic

Lover died in her bed

Husband died in a car accident

Average age of widow in U.S. is 59 (US Census Bureau 2011)

Lessons from Lady Mary's Fiance', Patrick Crawley



Went down with the Titanic

Con man tried to steal his identity

Did he have a Durable Power of Attorney?

How to get him declared dead with no body?

Who had access to his digital assets?



Durable Power of Attorney

Written directive naming person who may act legally on your behalf

Invalid after your death

Every person age 18+ should have one

When needed?

Person is Missing, incapacitated, incarcerated

(But you can't get one if you are missing, incapacitated, incarcerated)

Florida Statute changed recently



No Body = Missing Person

How to Declare Missing Person Dead?

Florida Statute section 731.103(3) controls.

Presumed dead after five years;

But if the missing person was “exposed to a specific peril of death,” the court may declare the person dead sooner.

The sinking of the Titanic is a “specific peril of death” that we would argue would allow the court to declare Patrick Crawley dead right away.



Access to Digital Assets

If your cell phone or iPad or Kindle or laptop or desktop were lost today, what valuable or significant digital property would you lose?

If you are in an accident today, could your family or fiduciaries access your valuable or significant digital property while you are incapacitated?

If you die today, what valuable or significant digital property would you want your family or friends to have? What would you want them to *not* have?

Lessons from Lady Mary's Lover, Kemal Pamuk



Made the tragic mistake of having sex with Lady Mary
Died in her bed

Lady Mary, the Countess Cora, and Maid Anna dragged his body
around the castle to save Lady Mary's reputation

What should you do if a houseguest dies in your house?

Lessons from Lady Mary's Husband, Matthew Crawley



Served in the Armed Forces & was temporarily physically disabled
Died in a car accident, survived by spouse and minor child
Estate Tax & Estate Planning Issues



Incapacity

- Just over 1 in 4 of today's 20 year-olds will become disabled before they retire.
- Over 37 million Americans are classified as disabled; about 12% of the total population. More than 50% of those disabled Americans are in their working years, from age 18-64.
- 8.8 million disabled wage earners, over 5% of U.S. workers, receiving Social Security Disability (SSDI) benefits at the end of 2012.
- In December 2012, over 2.5 million disabled workers age 20s, 30s, and 40s receiving SSDI benefits.



Who Inherited After Matthew Died?

- Matthew Crawley had no apparent estate plan
 - Handwritten Will found months later
- Intestacy laws in Florida
 - Let's ignore crazy British laws
- Because no trust-based plan, estate would go through probate
 - Intestacy or Will-based estate plans
 - Both go through probate court

Transfer Tax System

	2009	2010 (old)	2010 (new)	2011 (old)	2011 (new)	2012	2013 (old)	2013 (new)	2014
Gift Tax Exemption	\$1M	\$1M	\$1M	\$1M	\$5M	\$5.12M	\$1M	\$5.25M	\$5.34M
Maximum Gift Tax Rate	45%	35%	35%	55%	35%	35%	55%	40%	40%
Estate Tax Exemption	\$3.5M	All	\$5M	\$1M	\$5M	\$5.12M	\$1M	\$5.25M	\$5.34M
Maximum Estate Tax Rate	45%	None	35%	55%	35%	35% with portability among spouses	55%	40% with portability among spouses	40% with portability among spouses
Exemption from GST Tax	\$3.5M	All	\$5M	\$1M	\$5M	\$5.12M	\$1M	\$5.25M	\$5.34M
GST Tax Rate	45%	None	0%	55%	35%	35%	55%	40%	40%



Portability

Made “permanent” in 2013

Allows surviving spouse to make an Estate Tax Return (Form 706) election to take advantage of the unused portion of the estate tax exemption of the predeceased spouse.

- This provision does not allow the GST tax exemption to be transferred to a spouse.
- Must file Form 706 at death of first spouse.

Portability

Requirements:

- Legally married at time of death.
- Death of spouse occurs after December 31, 2010.
- Election to transfer any DSUEA must be made on timely filed 706.
- May only be transferred to a surviving spouse.
- The DSUEA (or lack thereof) of the last deceased spouse wipes out any DSUEA previously transferred to the surviving spouse by an earlier deceased spouse.

Federal Income Tax Maximum Rates

Federal Income Tax Rates	2011-2012	2013 & 2014	Combined Rate
Ordinary income	35.00%	39.60%	43.40%
Long-term capital gains	15.00%	20.00%	23.80%
Qualified dividends	15.00%	39.60%	43.40%
Medicare tax on net investment income (add to above rates)		3.80%	
Medicare tax on wages - employee	1.45%	1.45%	
Medicare tax on wages - employer	1.45%	1.45%	
Medicare tax on wages - employee (above \$200K Single, \$250K MFJ, \$125K MFS)		0.90%	
Social Security tax wages - up to \$117,000 in 2014	6.20%	6.20%	

Lessons from Lady Mary's Sister, Lady Sybil Crawley Branson



- Died while family argued over who could make medical care decisions for her
- Was married to the non-citizen chauffeur (Tom from Ireland)
- Left a minor child with no instructions as to guardian



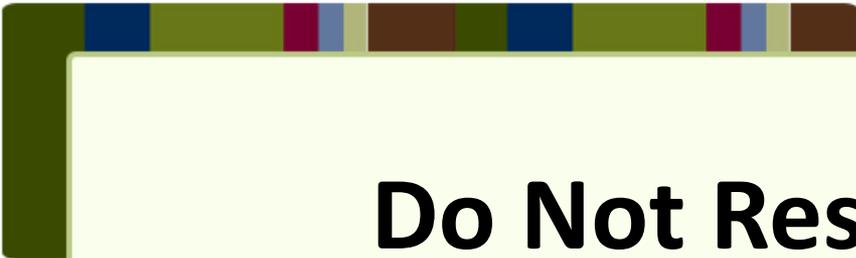
Health Care Surrogate

- Written document that names person who will make informed consent medical care decisions to keep you alive
- If you are unable to be your own advocate, this person will consent to brain surgery or let medical staff know you are allergic to penicillin



Living Will

- Written document that names person who will “pull the plug”
- Three paths to get you to critical situation
- Two physicians have said medical science is exhausted and there is no hope you will survive
- Remove life support if on life support
- Remove hydration and nutrition



Do Not Resuscitate (DNR)

- States CPR is not to be initiated if breathing stops or the heart stops beating.
- Physician writes, not attorney, after discussing the issue with the person, proxy or family.
- Used to be facility-specific; now portable between facilities
- Traditionally printed on canary yellow paper



Physician Orders for Life Sustaining Treatment (POLST)

- Available in some states, not all
 - Florida is “in development”
- Broader than DNR
 - DNR only applies to CPR
 - POLST may apply to resuscitation, hospitalization, use of antibiotics and intubation
- Physician writes, not attorney, after discussing the issue with the person, proxy or family
- Portable between facilities
- Traditionally printed on pink paper



Non-Citizen Spouse

Sybil could leave Tom her husband/chauffeur \$5.34M estate-tax free at her death

Assets in excess of \$5.34M would need to be in a Qualified Domestic Trust (QDOT) or be subject to estate tax

Sybil could have gifted \$145,000 per year to Tom (not limited to \$14,000 annual gift exclusion)

Out of Country Guardian of Child

Sybil's husband Tom is a citizen of Ireland

As surviving parent, Tom is natural guardian of child

Tom may appoint guardian of child if something happens to Tom

What if Tom names guardian in Ireland, not in U.S.?

Must be in writing

Appoint temporary local guardian

Discuss intent for child to live outside U.S. with permanent guardian

Lessons from Lady Mary's Grandmother, Dowager Countess Violet Crawley



Irascible Mother of Robert Crawley
Has charitable intent when it suits her
Issues of aging
Gift planning

Charitable Donations from IRA

Why is this a big deal?

- Was allowed until 2014; might be allowed again
- If allowed, distribution to charity satisfies RMD
- Married Filing Joint can contribute \$200,000
- Yet does not increase taxable income on 1040
 - But Client does not take charitable deduction on 1040
- If client took distribution, then gifted to charity, and took charitable deduction on 1040, result is not as favorable



Lifetime Non-Charitable Gifting

Gift \$5.34M over your lifetime with no tax

Plus \$14,000 per year per person

But gifts have carryover basis

Do the math on arbitrage between gift/estate tax and capital gains tax



Costs of Elder Care

- ATRA repealed the CLASS program which was authorized to explore the development of a long-term care program as part of the Affordable Care Act
- Where will funds come from to pay for nursing home costs and long term care insurance?
- Different levels of care
 - Independent living
 - Assisted Living
 - Skilled Nursing
 - Memory Care



Costs of Elder Care

Cost of assisted living facility in Florida is \$1,200 to \$3,700 per month

My Mom's rent in Maitland in 2014:
\$4,300/month

Her out-of-pocket prescription drug co-pays:
\$10,000/year

These figures do not include dental, clothing, entertainment, beauty parlor, telephone, newspapers, hospitalization co-pays, etc.

Taking Away the Car Keys

- Legal, moral, ethical, and social implications of taking away a loved one's car
- What will person do to get around?
- State of Florida suggests:
 - Take the bus
 - Walk
 - Ride a bicycle
- How will you know when you no longer are safe to drive?

Taking Away the Car Keys

In Florida in 2002-2003:

- 2,204,104 drivers ages 65 to 74
- 242,480 age 85+
- 20%+ of age 85+ drivers are considered dementia drivers with a mild to moderate condition
 - Florida Department of Highway Safety & Motor Vehicles. "The Effects of Aging on Driving Ability." Florida At-Risk Driving Council. February 2004.
<http://www.flhsmv.gov/ddl/atriskdriver.pdf>

Thank you for attending

