

sympathetic to the claims that so-called warehousing is generally bad. Another common concern is that because DAFs are generally pass-throughs to other charities, various sorts of donor abuses can occur and are more likely than when charitable contributions go directly to “real” charities. Such abuses range from sophisticated estate-planning transactions down to donors running contributions to athletic departments for tickets through a DAF to obtain a 100 percent charitable deduction rather than the allowed 80 percent deduction. Lest the reader think that such concerns are fanciful or obscure, the international magazine, *The Economist*, in its March 25, 2017 issue, highlighted potential DAF abuses, as well as warehousing and concluded of DAFs: “At present, there is scant evidence to suggest they fuel an overall rise in giving. Many philanthropists sing DAFs praises. But that does not prove their worth to society as a whole.”

We ought note in passing that many in the CF field believe that the NSOs actually limit the degree to which CFs will be regulated. That’s because the lobbying power of the NSOs is assumed to far outstrip that of CFs. Of course, even if that were true, on some issues, the two groups have differing concerns; for example, we can reasonably assume that in 2006, when the Pension Protection Act imposed excess business holdings rules on all DAFs, those maintained by CFs were more heavily affected than those held by NSOs.

Third, Prof. Colinvaux points out that there’s a solution to this potential regulation: CFs should distinguish themselves from DAFs maintained by NSOs because they’re located in, serve and are responsive to particular communities, especially geographic communities. Not only does community service have its own charitable purpose that’s independent from merely maintaining advised funds, but also, the presence of a community board and the need to raise funds from a particular community limits the likelihood of donor abuse. The author would have CFs limit their grant-making and activities outside of their geographic service area to enhance this distinction. Accordingly, CFs would occupy a different niche in U.S. philanthropy from not only PFs but also from NSO advised funds, and for that matter, from national DAFs operated by other kinds of communities like churches or causes. This would enable CFs to argue for an appropriate level of regulation that,

the author believes, would be less burdensome than is likely otherwise. As a technical matter, the specific proposal is for a definition of a CF in the Internal Revenue Code itself (we have a definition, since 2006, of a DAF but not of a CF), although the author recognizes such a proposal focuses attention and once attention is focused by Congress, staff, Treasury and the IRS, undesirable results may result.

The issues identified in the article are significant and are worth keeping an eye on. The point for all those interested in philanthropy to remember is that in all political settings, advocacy for CFs and DAFs is worthwhile and may ultimately make a difference in the timing and degree of regulation.



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ARTICLE: “Cultivating Gardens and Cultivating Generations: Purposeful Living as Standard of Care for Elder Law Attorneys,” 25 *Elder Law Journal* (forthcoming 2018)

With much 2017 discussion on the possible repeal of estate tax, estate planners are being asked by their children, “Daddy and Mommy, in the non-federal estate tax world, what will you do when you grow up?”

The answer is well known to all estate planners. Estate tax planning is only a small facet of what we do day in and day out. We act, more globally, as advisors on all things family: how to properly be a wealthy person, how to provide funds to your children without encouraging lethargy and lack of effort, how to use wealth to instill charitable values, how to avoid bad characters trying to take money away from clients, counseling on marriage and unmarried (“divorce” is such an ugly word) and overall the steps to lead productive and value-laden lives.

And, to add to the list, Kimberly E. O’Leary and Marie Were, in “Cultivating Gardens and Cultivating Generations: Purposeful Living as Standard of Care for Elder Law Attorneys,” do an excellent job expanding on the universe of roles for the estate planner, emphasizing that we need to make sure our elderly clients approach the 18th hole with purpose, dignity and financial protection. Those under age 70 tend to have blinders on as to what it’s like to be elderly. “Ahhh, I can’t wait to be retired and older; I will have no worries about work.” True enough, perhaps, but at 70 and beyond, we’re no longer doing “down and outs” on Sunday football games. Financial matters become a bit more complicated and worrisome. Living arrangements are at the forefront of daily considerations. Spouses often become deceased spouses; friends are fewer; and opportunities are more limited by physical and mental constraints. In a sense, an older individual’s universe becomes a continually decreasing orb.

And, here the estate planner can step in to add a bit of optimism and protection. On the protection side, the planner can make sure there are structures in place such that caregivers and others can’t exercise undue influence or improper influence over financial matters.

On the optimistic side, we can work with our clients to ensure they have a “purpose” in life.

The authors introduce the topic of representing the elderly with two of the most important aspects for practitioners: (1) what it means to represent the elderly, and (2) the thoughtful way in which planners can add value.

On representing the elderly, the authors note the following universe of areas for a practitioner to be

focused: estate planning, of course, independence planning (where the clients will live as their care becomes more relevant), availability of governmental benefits, avoiding both financial and physical abuse situations, health care access, long-term care insurance, pension rights and how to deal with declining faculties.

And, then the authors introduce the most important theme, advancing the happiness of the elderly by making sure they have purpose, or what the authors reference as “Purposeful Living.” They emphasize to the planner: “We need to advocate just as passionately in favor of encouraging and enabling purposeful living.”

A note for all of us, elderly and young, in reference to Purposeful Living research: “Researchers have controlled for other factors, and greater sense of purpose highly correlates with longer life and better quality of life as a factor on its own.”

And, with the possible repeal of the estate tax and a renewed emphasis on how to intelligently leave funds to adult children without discouraging Purposeful Living, this theme is relevant for all clients.

The authors suggest how planners can implement the Purposeful Living concept into their practice. Impliedly, they suggest that planners should have “discussions [with clients] about their goals and opportunities to actually practice behaviors that will give them this sense of purpose.” Planners can do this by making this a discussion and theme in estate-planning meetings and, I suggest, by having resource materials available (the authors cite the Maslow pyramid and Viktor Frankl’s psychological theory referred to as “logotherapy,” which would be two excellent resources for clients).

In addition, a good part of the article is spent reviewing customs overseas on practices that will help the elderly, in terms of their living arrangements.

For practitioners who are looking to add value to their practice, beyond estate tax reduction (meaning all of us), the principles and discussions in this article can be quite useful not only for the elderly but also for the young, for the well to do, for the retired and, essentially, for all of us. The theme, incorporating Purposeful Living into our discussions with clients, is one that will be meaningful for all of our clients and is within our skill set. 