WiSe Up Teleconference Call
Estate Planning for Women
June 30, 2006
Questions and Answers

Jane Walstedt: And now I’m going to turn … I’m going to ask the operator once again to give us instructions on how to ask a question.

Tracy?

Coordinator: Certainly.

At this time we’re ready for a question and answer session. To ask a question, press *1, unmute your phone, and record your first and last name only, as you’ll be announced prior to asking your question. To withdraw your request, press *2.

Jane Walstedt: While we’re waiting for the questions to start, Rebecca, I wanted to follow up on something you said. You mentioned having information for your children and your parents on where to find various financial documents. But isn’t it also important for spouses to do that? I’m thinking of, for instance, where one spouse, maybe the wife, defers to the husband to handle financial matters. And I would think it’s also very important for her to know where these things are.

Rebecca Pace: Oh, absolutely. Yes it is. Yes.

Jane Walstedt: Okay.

Tracy, do we have a question?

Coordinator: I show no… actually, just as I started to say that, we do have a question from Selma Taylor.
Selma Taylor: Hello, my name is Selma Taylor. I wanted to question, ask a question to the estate planner about a trust. And I wanted to find out if, if you have your assets in a living trust, in particular your home, and you want to refinance your home, do you have to take it out of the trust to deal with it or how do you that?

Patricia Annino: Frequently you do have to take it out of the trust because [of] the way that mortgages are now sold in the second[ary] market. Nobody wants to read the trust to determine whether or not you still own it or control it. So the general rule now is that you’re supposed to take the home out of the trust, put it back in your name, refinance it, and then put it back in [the trust]. And that gives the bank or financial institution first position [to take possession of the home] in the event you defaulted.

Selma Taylor: Okay.

And if--as a follow up question--is there some alternative to a living trust if you want to avoid probate?

Patricia Annino: Joint ownership of assets avoids probate. The problem is that once you put someone else’s name on the deed with you, it’s their asset for creditor purposes, for divorce purposes, for financial aid purposes, for all those other reasons too.

Selma Taylor: Joint tenancy, would that be a joint asset way to [avoid probate]?
Patricia Annino: Yes. It would avoid probate at the first death but not at the second.

Selma Taylor: Okay. Thank you.

Jane Walstedt: Tracy, do we have another question?

Coordinator: We do. Our first coming from Joleen Jennings.

Joleen Jennings: Hi. This is Joleen.

I was wondering if you could tell me if there is an access to the Homestead Act form for Massachusetts via the Internet versus City Hall?

Patricia Annino: Yes, you actually can get it on a Web site of any registry of deeds. Whatever county you’re in, you can go to the Registry of Deeds Web site and download the form.

Joleen Jennings: Wonderful. Thank you so much.

Jane Walstedt: Tracy, do we have another question?

Coordinator: Our next question comes from Kim Robinson.

Kim Robinson: Hi, my name is Kim Robinson, and I was wondering if there’s a good age that you suggest people start looking into having a will drawn up or healthcare proxy or the durable power of attorney that you’ve suggested?

Patricia Annino: Personally, I think when you’re 18 in Massachusetts or 21 in whatever jurisdiction you should start with that.
Whenever you have minor children, you should do a will to name the guardian. The healthcare proxy should absolutely happen when you’re 18.

Jane Walstedt: Tracy, do we have another question?

Coordinator: I show no additional questions. But as a reminder, to ask press * 1.

Jane Walstedt: Let me ask another one then to…for Patricia. Could you tell us the kinds of things that are in a taxable estate? I know you mentioned that $2 million estate or estates being subject to federal tax after they reached $2 million. But I went through a pre-retirement seminar recently, and there’s state estate taxes too, and they may be at a lower level. And I know that $1 million or $2 million sounds like a lot, but it’s not just your house and your… you know, it’s things like your life, the value of your life insurance policy. Right?

Patricia Annino: You’re right. And that’s kind of a tricky question because if you follow the advice and let’s say you want to replace $100,000 worth of income that would be coming into the family and you went out and purchased a $2 million life insurance policy to protect that, and you and your spouse both died, your assets would probably be above $2 million and then be in a federal taxable estate situation, even though if you were alive…most of us are worth more dead than alive because of the life insurance component.

And the government taxes that life insurance as an asset at your death, unless you put it in a special kind of a trust called irrevocable life insurance trust to keep it out of your taxable estate, which can be done.
And you’re also right about the states. In the past four years the laws in almost every state have dramatically changed, and states are now reenacting an estate tax.

And in Massachusetts there’s a $1 million exemption. Once you go above that, the highest [tax] bracket is 16%, which a lot of people are completely unaware of.

I should say that most assets are tax deferred between spouses. If you’re married to someone who is not, who is a United States citizen, then any estate taxes are not due until both of you die.

If you’re married to someone who is not a US citizen, that isn’t true.

Jane Walstedt: I’m thinking of the kids when their parents die, when one parent dies and then, you know, when the other parent dies.

Patricia Annino: Uh-huh.

Jane Walstedt: But I know that in that same seminar we were told the combination of the state and federal taxes can be quite a high percentage.

Patricia Annino: Fifty percent.

Jane Walstedt: Right. I just want people to be aware of that.

Pamela Bonds: And I was just going to add to that in addition to the life insurance, your retirement plans also fall into any type of an estate that you’re looking at.
Jane Walstedt: Uh-huh. So people need to be aware of what constitutes the estate and what may be subject to tax.

Pamela Bonds: And also the good news about...if you have an irrevocable life insurance trust, you can maintain legal control over the policy. So it makes better sense than just transferring ownership to another person.

Jane Walstedt: Uh-huh.

Rebecca Pace: In Ohio the estate tax starts at $333,000. So it doesn’t have to be a particularly larger estate to be subject to an estate tax in Ohio.

Now I do want to be sure that people understand that insurance--life insurance--is subject to estate tax but not income tax. There’s some misunderstanding about that.

Jane Walstedt: Thank you, Rebecca.

Tracy, do we have another question?

Coordinator: You do have questions. One moment please.

Our first coming from Betty Gregory.

Jane Walstedt: Go ahead, Betty.

Betty Gregory: I’m sorry. I must’ve accidentally hit the button. I didn’t have a question.

Jane Walstedt: Okay.
Coordinator: Thank you. Our next question comes from Sonia Weirich.

Sonia Weirich: Hi, my name is Sonia, and I had a question about maintaining your assets in a trust. I was wondering if you have any tips on how to properly maintain your assets in a trust.

And also once you do pass and your beneficiaries are receiving those assets from the trust, is there a way to dissolve the trust at a later date so that the beneficiaries don’t have to maintain the trust?

Jane Walstedt: Who wants to take that question?

Rebecca Pace: It sounds like a question for Patricia. Do you want to?

Patricia Annino: Okay. Trusts. You know, trusts today are… there’s a lot of different kinds of trusts. There’s a revocable trust that you set up now and that you are in total control of, that you change at anytime, that becomes irrevocable -- meaning you can’t change it anymore -- if you become disabled and irrevocable at your death.

You, when you set up the trust, have a lot of control over when that trust ends. So some people will say that it never ends. Some people will say that it ends immediately when they die, and immediately means after a wind-up period of one to two years.

People with minor children typically will say that a team of trustees or the people who are in charge will be in charge and will pay over whatever is advisable for health, education, support and maintenance of those children and their guardian until the child reaches a certain age, at which time the child can then overrule the trustee and take out his or her share regardless of what the trustee says.
And most people will stagger the distribution [the money paid out of a trust] over intervals of time-- typically five-year intervals of time is what I’ve seen--knowing that if somebody gets a flood of inheritance at the beginning, they might blow it. But if they had to wait for their second installment, they might be more cautious, and then as an ultimate safety net, maybe even five years passed.

But I will say in the area that I’ve been practicing, the ages at which people tend to give money to children has been increasing. And the most common ages right now that I see are a third at 30, a half at 35 and all of it at 40. And part of that also is to put a mechanism in place to try to soften the blow of what someone could take in a divorce.

To avoid probate [the legal process of settling the estate of a deceased person. See Wikipedia, the free encyclopedia, http://en.wikipedia.org/wiki/Probate] what you have to do is title the assets in the name of your trust now. And a revocable trust is just a pass-through entity. It doesn’t file a separate tax return; it’s - the income is reported on your own individual income tax return, and it’s done so that instead of holding your brokerage account in the name of Jane Jones, it would be re-titled in the name of the Jane Jones Trust with you as the trustee, and that is what would constitute holding it in the name of the trust and not you - not individually.

Pamela Bonds: I wanted to add with that very quickly…one of the things that people don’t always know is that revocable living trusts are private documents. Who gets what and when, how your business is handled, is not going to be public knowledge.
Unfortunately, when you have a will, the transfer of assets to your heirs is always public. So there may be some benefits to some people to consider the revocable living trust as opposed to just having a will.

Rebecca Pace: I wanted to add too, here in Ohio a trust can be dissolved if it falls below $100,000 by the request of the beneficiaries, or the beneficiaries can request it be dissolved if the cost of administration exceeded the value, not necessarily the dollar value but the tangible value of maintaining a trust. And that would be a probate judge [who] would make that decision as to whether or not it was just time to go ahead and dissolve the trust.

Pamela Bonds: One other quick thing that I’ve seen people do is they put their taxation or their taxable assets in “payable to my estate” as a beneficiary. And that’s kind of a poor decision because basically you’re going to say that this is going to your estate versus a beneficiary, and that doesn’t…that still puts you at risk to have your estate go to probate, all the things that we’re trying to tell you not to do.

Jane Walstedt: Tell me…that leads to a question in my mind. What kind of an attorney should somebody use for estate planning purposes?

Patricia Annino: I think it depends on the level of complexity. I think if you are building your net worth, and your assets are not that significant, they’re not in a taxable situation, a lot of attorneys, whether they’re a specialist or not, can handle that.

When it gets to be much more sophisticated than that, because of the complexity of the estate laws and the tax laws, it’s probably better to go to somebody who does it most of the time.
Jane Walstedt: And what would be the name of that kind of attorney?

Patricia Annino: Well, an estate planning attorney, somebody who specializes in estate planning and probate.

Jane Walstedt: Right, okay.

Now, Tracy, do we have another question?

Coordinator: I show no additional questions.

Jacqueline Cooke: I have a question, Jane.

Jane Walstedt: Okay. Go ahead, Jackie.

Jacqueline Cooke: Thank you.

Well, I understand that we should all--for our 18-year-olds--have them have a healthcare proxy. I’m just curious. I live in Massachusetts. If an 18-year-old doesn’t have one, are the parents assumed to be the healthcare providers, and is there a time lag…does the hospital go to court or…I’m just curious what would happen?

Patricia Annino: Now, once you’re 18 in Massachusetts, you’re an adult. And so if there’s a disagreement between the heirs at law, which are the mother and the father, then the doctors in the hospitals won’t act without a healthcare proxy or a court order.

Jacqueline Cooke: And if the parents are in agreement or if there’s only one parent alive then there’s no problem?
Rebecca Pace: The practical reality is the doctors in the hospital will do what’s needed.

Jacqueline Cooke: I see. Thank you very much.

Jane Walstedt: Tracy, do we have any questions?

Coordinator: One moment please.

We do have a question. Our first coming from Kim Robinson.

Kim Robinson: Hi. I just had another question and that is, when you go about trying to find an estate planner or someone who specializes in it, who…how do you go about trying to find someone who you feel is trustworthy? Or if you don’t really have a place to go for recommendations, is there a good place to start looking?

Patricia Annino: My experience is word of mouth is always the best. And then your other professional advisors--your life insurance person or your accountant--they’re good sources. And any bar association in your state also has a list of people who are qualified.

Rebecca Pace: If you’re working and you have a financial planner, they should be able to give you a recommendation as well.

Jane Walstedt: So if you’re looking for your bar association, for example, it would be in Massachusetts, Massachusetts Bar Association, right?

Patricia Annino: That’s right.
Jane Walstedt: You’d enter that as a search term on the Internet.

Tracy, do we have another question?

Coordinator: We had two additional questions, our first coming from Kelly Williams.

Kelly Williams: Hi, this is Kelly.

One of your speakers mentioned the three-ring binder and that you should list your keys. I thought that was an excellent idea. Is that list available?

Rebecca Pace: I can…this is Rebecca, and I’m the one who mentioned the checklist. And we went through that pretty quickly, but that will be on the Web site in the transcript. And I can also send the checklist, and I suppose they can post that. as part of the transcript.

Jane Walstedt: Yes, Rebecca. If you send us…if you email us the checklist, we will make it part of the transcript. [The Financial Documentation Checklist is attached at the end of the transcript of Rebecca Pace’s presentation.]

Rebecca Pace: All right.

Kelly Williams: Thank you.

Jane Walstedt: You’re welcome.

Tracy, you said you had two questions?

Coordinator: Yup. Our next is coming from Sonia Weirich.
Sonia Weirich: Hi, I have another question.

If someone has assets in two different states, how is it best to handle this regarding estate planning?

Jane Walstedt: Who would like to take that question?

Pamela Bonds: That sounds like Patricia again.

Patricia Annino: Well, what you want to do is have your primary work done in the state in which you’re domiciled, because the state in which you’re domiciled -- and domiciled doesn’t mean residence; domicile is a statement of intent where you intend your primary residence to be -- will be the main state for estate tax purposes and for establishment of certain rights, like can you cut out a child in a will, is a prenuptial agreement valid. You know, you want your main state to be the one that controls your documents and the supervision of what happens. But if you own real estate in more than one jurisdiction, you also want to consult with someone in that jurisdiction to make sure the documents conform to the laws of that jurisdiction because they do vary from state to state. And you want to understand what the estate tax consequences of owning property in different places are.

If you own property outside of this country, I also always recommend that someone in that country do a will that handles the disposition of that asset, because in some countries, for example, you can’t do a will that states where the asset is going to go. The laws of that country have…override it and automatically send it to a certain place.
So whenever you’re dealing with more than one jurisdiction, you should check in with the laws of that jurisdiction and make sure everything conforms.

Jane Walstedt: Thank you.

Tracy, do we have anymore questions?

Coordinator: We have two additional questions.

The next one is coming from Ramone McCoy.

Ramone McCoy: Hello.

Jane Walstedt: Hello, go ahead.

Ramone McCoy: Yes, I was curious about this homestead exemption. That’s the first time I’ve ever heard that term. Can you elaborate on that some more?

Patricia Annino: A homestead declaration is your affirmative declaration that your home is your home and your primary residence, and most states afford creditor protection for that.

In Massachusetts if you’re under the age of 62--and only if you file this homestead declaration, $500,000 worth of equity in that house is protected. If you are over 62, both people in the couple can go ahead and file that homestead declaration, and then up to a $1 million of equity in the home is protected from creditors.

In Florida, the value of the home is much more significantly protected if the homestead declaration is filed, and it depends upon the
contiguous acres of the property. So you need to check the laws of the state that you’re in. But I guess the thing to be aware of is it’s an affirmative filing. You’re not automatically entitled to it.

Ramone McCoy: Who is it filed with?

Patricia Annino: It’s filed with…it’s filed with the Registry of Deeds in the county in which you own the house. In other words, it’s got to go on public record.

Ramona McCoy: Do you know what it is in Alaska?

Patricia Annino: No.

Jane Walstedt: How would she find out? Go to the Registry of Deeds?

Patricia Annino: I would look at the Registry of Deeds Web site in Alaska. They probably will give some kind of handle on it. Yeah.

Jane Walstedt: So if you have a married couple and let’s say the husband has debts, or let’s say the wife has a business and somebody might try to get a debt repaid through her home. Would the homestead [exemption] be filed…or is it depending on how it’s filed, depending on how that property is held?

Patricia Annino: You have to be of…your name has to be on the deed to get the protection.

Jane Walstedt: But I mean if you have a married couple, both names have…
Patricia Annino: If you’re under 62—at least in Massachusetts—it’s only one person. So you’ve got to…who’s the worst driver, who’s the one in the more risky business, who’s the person who’s more likely to be sued, and have that person affirmatively file the declaration.

Jane Walstedt: Okay, good.

Jacqueline Cooke: I have two questions about that, Jane.

Jane Walstedt: Okay, go ahead.

Jacqueline Cooke: On the homestead declaration, would a real estate lawyer generally do that for a person while they were doing the transaction to buy the home?

Patricia Annino: One would hope so.

Jacqueline Cooke: That’s what I said.

Patricia Annino: But I find that more often than not, it does not happen that way.

Jacqueline Cooke: Okay, thank you.

And two, I guess I was sitting here thinking, “Well, it’s not a problem. I don’t have any creditors.” And then I was thinking even before you used the word “driver,” my daughter is about to start driving. Does that mean that if she gets into an accident, obviously I’m responsible, so that would be a new creditor, huh?

Patricia Annino: Absolutely. And today, for example—at least in Massachusetts—we have Melanie’s Law, which is if you’re out of town and your teenager
has a party when you’re gone and there’s liquor in it and anybody gets hurt, you are liable.

Jacqueline Cooke: Right.

Pamela Bonds: Can I just add one?

Jacqueline Cooke: So I think I’ll check with my homestead here. Thank you.

Pamela Bonds: I’m going to add one suggestion to that, and it’s a lot of people may or may not have heard of the personal *umbrella [liability insurance] policies*, which give you an opportunity to add… you may have your auto insurance policy which obviously is going to cover any accident that your insured has, but a personal umbrella policy can take that one step further. [Umbrella policies supplement the liability coverage you have through your home and auto insurance. See, for example, “Umbrella policies plug holes in your coverage,”](http://moneycentral.msn.com/content/Insurance/Insureyourhome/P35349.asp) and “Umbrella Policies Extend Your Coverage,”[www.insurance.com/Article.aspx/Umbrella_Policies_Extend_Your_Coverage/artid/164.](www.insurance.com/Article.aspx/Umbrella_Policies_Extend_Your_Coverage/artid/164.)

Jacqueline Cooke: Thank you.

Jane Walstedt: Okay.

Tracy, do we have any other questions?

Coordinator: Yup, one last question from Selma Taylor.
Selma Taylor: Yes, this is just a process question. How do we access the transcript of today’s session? It is of the presentations and the questions?

Jane Walstedt: You go on the Wi$e Up Website-- www.wiseupwomen.org. There’ll be a little bit of lag time before we get it up there because we have to proof the transcript. But it will be there.

Selma Taylor: Okay. And if I have a question about these teleconferences, who do I…is there a phone number that I can call?

Jane Walstedt: You can send it to me, Walstedt-Jane.

Selma Taylor: What’s your first name? I mean what’s the last name?

Jane Walstedt: My last name, W-A-L-S-T-E-D-T-Jane@dol.gov.

Now, Gail, I think you had a question?

Gail Patterson: Yeah, about the homestead declaration. How would that affect taking out equity in your home if you wanted to do that?

Patricia Annino: Some…again, some lenders make you take the homestead off then put the… take out the home equity loan and you have to put it back on again.

Gail Patterson: Uh-huh, okay.

Jane Walstedt: Okay, do we have anymore questions, Tracy?

Coordinator: I show no additional questions.
Jane Walstedt: I had one other one that I wanted to ask. I think I heard on television recently that for those people who have had an advance directive for healthcare for a while, they need to amend it to make sure that whoever has their advance directive, their healthcare agent, can access their medical records, so that an additional step is needed.

Do you know anything about that, Patricia?

Patricia Annino: Yeah, there’s a brand new federal law called HIPAA.

Jane Walstedt: Right.

Patricia Annino: The Health Insurance Portability [and Accountability] Act [of 1996]. And if your healthcare proxy was done before that, then it should be amended or redone.

Now, I also have to say, you don’t have to pay to have a healthcare proxy. First of all, they’re all over the Web, and whatever state that you’re in, you can download it. And the emergency room and admitting room of every major federal hospital that receives federal funding has them available.

It’s just that, I guess, in closing, to underscore a point is that the time to do any kind of estate planning is when there’s absolutely no need to do it. The worst times are the people I see who come in because they’ve been diagnosed with an illness or somebody just died and...or they’re going in for a major operation. And it’s against human nature to sit down and do the planning when there’s no need to do it because it’s not a very appealing topic and there are so many other things that people would rather do.
And so the real challenge is to listen to everything that was said today and then to start on that path and act with whatever your step is and start to make sure that your affairs are consistently put in order, and that those people who you are going to end up being responsible for that their affairs are in order too.

Pamela Bonds: Can… I just want to add about HIPAA. It actually stands for Health Insurance Portability and Accountability Act. And you really want to learn about that because that could have a devastating impact on your plans in terms of your financial situation and your wealth planning and your wealth transferring. So you want to make sure that you do understand if you’re insured through your company et cetera, just what all that means for you.


Rebecca Pace: I know that we’re almost out of time, but I did want to mention that the American Bar Association has a Commission on Law and Aging, and they have a wonderful piece on their Web site, which are tools for discussing, for talking about the advanced directive, the living will, the healthcare power of attorney. I believe it’s called “The Light the Way” Web site and it’s at www.abanet.org/aging/toolkit/home.html.

Jane Walstedt: Thank you so much, and I think that’s a great closing comment.

One quick one I want to make before I turn it over to Gail Patterson to give us closing remarks is that in the material that we got in that
seminar I was mentioning earlier, it said that an advance directive for health care is absolutely vital if you’re not married to your significant other. That is the only document that will give them the right to participate in your care and treatment or even allow them the right to be present with you in the hospital.