SEPTEMBER | 2014 | www.cp2law.com

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Rock Solid™ NEWS

COAN, PAYTON & PAYNE, LLC IS AN INTEGRATED TEAM OF HIGHLY TRUSTED PROFESSIONALS ORGANIZED TO PROVIDE WORLD-CLASS LEGAL SERVICES. TOGETHER WITH OUR CLIENTS, WE CREATE AND IMPLEMENT ROCK SOLID™ STRATEGIES FOR SUCCESS.

Affluenza

By: Peter B. Scott, Esq.,
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Joel sat in my office holding his head, lamenting a series of bad decisions that had led to the loss of his marriage and approximately $1 million that he'd inherited after his parents died unexpectedly two years ago. I hadn't seen this 27-year-old client since he had received his inheritance, but in our phone conversations, I'd detected a change. This affable young salesman had developed an edge to his voice, a bravado and arrogance that hadn't been there before his inheritance. Now he sat weeping, financially and emotionally devastated, a victim of "affluenza," the term psychotherapist Jessie O'Neill coined to describe the adverse effects that sudden wealth has on self-image, relationships, emotions, and happiness.[1]

Unfortunately, Joel's experience is not unique. All too often I have seen this scene play out as a result of inheritance. We know from newspaper accounts that some lottery winners quickly squander their newfound fortunes, too, ending up worse off than before their windfall.

The expression "shirtsleeves to shirtsleeves in three generations" refers to a similar phenomenon. A family business, nurtured by the founding generation, will be lost before it passes to the third generation. According to the Boston-based Family Firm Institute, a non-profit trade group for family businesses, only 30 percent of family-controlled businesses survive the generational transition.[2]

Of course, a parent could follow billionaire Warren Buffett's advice. He said that children should be left "enough money so that they could do anything, but not so much that they could do nothing." Buffett said he believes that children should carve out their own places in the world and that leaving them more than necessary is "an antisocial act."[3]

Buffett's view was expressed some 100 years ago by Alfred Nobel, who left his immense fortune for the establishment of the Nobel prizes, rather than to his children. In Nobel's words:

> *I regard large inherited wealth as a misfortune, which merely serves to dull men's faculties. A man who possesses great wealth should, therefore, allow only a small portion to (descend to his relatives. Even if he has children, I consider it a mistake to hand over to them considerable sums of money beyond what is necessary for their education. To do so merely encourages laziness and impedes the healthy development of the individual's capacity to make an independent position for himself.*[4]

However, most of our clients do not have the wealth of Messrs. Buffett and Nobel and they want to leave the bulk of their wealth to their children. Customs and sometimes laws dictate that children will receive their parents' wealth. Except in Louisiana, a parent in the United States may choose to disinherit a child. Louisiana law, however, provides that a child is entitled to one-fourth of the parent's estate and two or more children may split half of the deceased parent's estate.

The rise in affluence nationwide has brought the problems of affluenza to center stage. Wealthy parents are concerned about destroying the lives of their children through inheritance. An increase in the estate tax exemption from $100,000 in 1985 to $5.34 million in

Intellectual property attorney Kay L. Collins specializes in trademark and copyright law. Kay has been an active member of the Fort Collins community since 1979 when she began practicing law. When not in the office, Kay enjoys hiking, cross-country skiing, and downhill skiing with her outdoor adventure group. Closer to home, Kay can be found kayaking on her neighborhood lake, quietly writing poetry or participating in her book club. She has two adult children with whom she enjoys traveling.

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Affluenza (continued)

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2014 has allowed advisers to focus more on these effects instead of the estate tax.

Neither parents nor advisers find it easy to understand the complex emotion and dysfunction associated with money. Heirs' reactions may include denial, discomfort, embarrassment, shame, guilt, a sense of entitlement, or an obsession with success. Children may feel that they don't deserve their inheritances, or they may lose their senses of identity. Unpleasant experiences with friends who take advantage of them may cause them to grow suspicious, hindering lasting friendships or serious relationships.

Recipients of inherited wealth also may lose their sense of direction and self-worth. Without any monetary incentive, they may lack motivation. They may quit their jobs, lose focus, pursue indulgent and extravagant lifestyles, and perhaps fall into addictions. Some inheritances may be large enough that they eliminate the need to earn a living; others may be small and mistakenly lead heirs into thinking they are set for life.

At the other extreme, heirs may become driven to outperform their parents, an obsession that can lead to isolation, destruction of family, and loss of friends.

In Joel's case, he quit his job shortly after receiving his inheritance to begin day-trading and investing in real estate. He mistook his parents' success for his own and saw himself as an astute self-made businessman who didn't need professional advice. As a result, he entered inappropriate business ventures, took lavish vacations, and invested in highly leveraged real estate transactions. His investments and business deals proved disastrous and left him divorced and penniless.

The best way to treat affluenza is through emotional and financial education and counseling. Parents should have frank discussions with their families so that heirs know what they are receiving, how they are receiving it, when they are receiving it, and where it came from. Heirs also should know why their parents structured the inheritances as they did, the thought process behind parents' planning, and what parents are trying to accomplish with their plan. Heirs then have the opportunity to ask questions, challenge, and receive explanations. This open discussion can help minimize or even eliminate affluenza.

The Ultimate Gift by Jim Stovall can help get this discussion started.[5] It's the story of a ne'er do well trust-funder who must pursue a series of challenges over one year, each designed to teach him a life lesson, if he is to receive his inheritance. In addition, programs such as the Ultimate Gift Experience, Sunbridge Network and Wealth Reception™ concepts, pioneered by the National Network of Estate Planning Attorneys, all offer education for wealthy families and resources for their advisers.[6]

To be truly helpful to our clients, advisers must embrace intergenerational planning and help families use their wealth to generate good for themselves and the world in which their heirs will live.

Peter B. Scott, J.D., LL.M., CFP®, is an estate and business planning attorney with Coan, Payton & Payne, LLC in Fort Collins, Denver and Greeley, Colorado. He earned a B.A. in business administration and economics at Drury University and J.D. and L.L.M. (tax) degrees in Washington University, St. Louis, Missouri. Contact him at pscott@cp2law.com

Endnotes

1. See Jessie H. O'Neill, The Golden Ghetto (Center City, MN: Hazelden, 1997).
2. See W. Dyer, Jr., "Cultural change in family firms: anticipating and managing business and family transactions" (San Francisco: Jossey-Bass, 1986); and J. Applegate, "Keep your firm in the family," Money, 23 (1994): 88-91.
3. Richard I. Kirkland, Jr., "Should You Leave It All to the Children?," Fortune (September 29, 1986). Available at http://money.cnn.com/magazines/fortune/fortune_archive/1986/09/29/68098/index.htm.
4. In Ragnar Sohlman and Henrik Schuck, Nobel: Dynamite and Peace (New York: Cosmopolitan, 1929), as described in J. Michael Bishop's book, How to Win the Nobel Prize (Harvard University Press, 2003).
5. Jim Stovall, The Ultimate Gift (RiverOak Publishing, 2001).
6. More information about the Ultimate Gift Experience is available at http://theultimategift.com/; more information about the Sunbridge Network is available at http://www.sunbridgenetowk.com/; and more information about the National Network of Estate Planning Attorneys and Wealth Reception™ is available at http://www.nnepa.com/

Jacob W. Paul, Esq.

Completed the Greeley Chamber of Commerce Leadership Weld County program and has been appointed to the Board of Directors for the Greeley Philharmonic Orchestra and to the Erie Tree Council

CP2 Gives Back

On June 21, 2014, the CP2 team set aside their pens and shut down their computers to pick up hammers and paint brushes for a build day with the Fort Collins Habitat for Humanity. Together with friends and family members, the CP2 Team spent a Saturday contributing to Habitat's "Women Build" project, which is a house that was entirely funded through donations of women. Fort Collins Habitat for Humanity is part of a global organization that partners with community volunteers like CP2 to build homes for families in need.

The Fort Collins Habitat for Humanity build day is a small example of the CP2 team's dedication to giving back to the communities in which we live and work. Various CP2 team members serve on the boards for non-profit organizations such as United Way of Larimer County, Rocky Mountain Innosphere, B.A.S.E Camp, Generation United, Greeley Chamber of Commerce Board of Directors, Global Refugee Center, Community Foundation Serving Greeley and Weld County, and the Greeley Philharmonic Orchestra.

CP2 Is Growing

Coan, Payton & Payne, LLC is pleased to announce the addition of attorneys Faith Betz and Edwin S. Chapin.

Faith Betz, Esq.,
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Faith Betz, Esq.

Ms. Betz joined the CP2 team in July, 2014 and represents clients in the areas of elder, probate and immigration law, assisting her clients with estate and trust planning, powers of attorney, advance directives, long-term care planning, Medicaid and veterans' benefits eligibility, disability claims, conservatorships, and guardianships.

In addition, she represents clients in all manner of immigration cases, including those involving family-sponsored visas, employment-based visas, lawful permanent residence, naturalization, waivers, humanitarian-based applications, and consular process.

Ms. Betz is licensed to practice law in both Colorado and Tennessee and is accredited by the U.S. Department of Veterans Affairs. She received her Juris Doctorate with Honors and her bachelor's degree with Highest Honors from the University of Tennessee. She is a member of the National Academy of Elder Law Attorneys and the Colorado Bar Association's Elder Law and Immigration Law Sections. She participates in the Weld County Bar Association and Elder Care Network of Northern Colorado. Additionally, she is a past membership vice-chair for the Animal Law Committee of the American Bar Association.

Ms. Betz comes to CP2 after managing a solo practice in Loveland for ten years. In addition to her law practice, she developed planned giving programs for nationally recognized non-profits. Ms. Betz will work principally from the firm's Greeley office.

Edwin S. Chapin, Esq.

Edwin S. Chapin, Esq. joined the firm's Greeley office in September, 2014. Mr. Chapin represents clients in the areas of real estate transactions including complex commercial transactions, commercial leasing and land development as well as oil and gas related issues. Mr. Chapin has a strong background in oil and gas related matters and has assisted clients with mineral title and surface use issues including oil and gas lease negotiation.

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Mr. Chapin obtained his B.S.B.A in Economics from the University of Denver, Daniels College of Business, and he graduated with honors from the University of Wyoming College of Law. Prior to joining CP2, Mr. Chapin practiced law with a boutique law firm in Greeley, Colorado. He is active in the Northern Colorado community and recently joined the Rotary Club of Greeley. Mr. Chapin will work principally from the firm's Greeley office.

Farm and Ranch Succession Planning

Three kids: farmer, engineer, and accountant. Farmer is back on the property that his grandparents bought in the 1940's while the engineer and accountant are off in the big city. Mom and dad are back on the farm and working with the farmer who does most of the hard labor now. As mom and dad age and begin to slow down a bit, farmer starts to take on more and more of the responsibility, including more marketing and ultimately management decisions. Farmer is also taking care of mom and dad physically as they age. Farmer is wholly dependent on the real estate mom and dad own as his livelihood for the farming operations. Mom and dad expect that, when they pass, their property may or will be divided equally between farmer, engineer, and accountant, and that engineer and accountant will still allow farmer to farm. They have voiced to farmer that they want him to continue to farm the family's property. Suddenly, mom and dad pass without any estate plan in place, or perhaps they have a plan that provides for everything to go equally to farmer, engineer, and accountant. With mom and dad gone, there is no one to keep the peace. With pressure from the spouse of the engineer, the engineer pushes for a sale of his portion of the assets to get his share in cash to buy a condo at the beach and a new car for his wife (they divorce two years later). Farmer loses the ability to farm that property. Accountant thinks farmer benefitted unfairly by living with mom and dad without paying rent while he was caring for them and spitefully decides to lease her portion to a neighboring farmer. Farmer loses the ability to farm that property, too. Failing to persuade his siblings to either sell or lease to him, and finding nothing written in his parents' estate plan to force them to give him that farm land opportunity, farmer gives up and takes a job driving a truck across country. This is not the outcome the parents were expecting, but nonetheless, it is what happens to the family in this example, and these events completely leave the farm operation obliterated despite the years of hard work that mom and dad had put into it.

Jenna Keller, Esq.,
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Historically, estate planning with farms and ranches involved a division of the property so that each child would receive property to start their own farm. If there were three children and three sections of property, each child would receive one section. This was viewed as an equal way to share the farm or ranch, and was a way to allow each to begin their own operations. Fast-forward nearly 50 years, and in today's farm and ranch environment, it is rare that all children remain on the farm or ranch, and for some families, no children may be interested in taking on the farm and ranch operation. Additionally, a child who remains on the farm or ranch may need every bit of equipment and real estate to make it work. Pressures may come from siblings who have left the farm or ranch, urging the remaining child to sell the property and distribute proceeds after mom and dad pass away, which may destroy the livelihood of the child who desires to remain in the farming or ranching operation.

The good news is that there are many avenues within which to plan to ensure the viability of the farm and ranch into the next generation. Farm and ranch planning may include discussions about the notion of contribution versus compensation, i.e how to

Farm and Ranch Succession Planning (continued)

value the contribution of a child who remains on the farm or ranch; how to ensure that an estate plan is fair, but not necessarily equal, to each of your children; and how to provide opportunity for those who may want to farm and ranch and be fair to those who no longer desire to farm or ranch. In our example, farmer did not receive any recognition of his contribution over the years. Had mom and dad compensated him with cash or ownership interests, he may have had leverage or resources to buy out his siblings. Also, there are many arrangements that can be "fair" to children, but are not necessarily equal. The worth of cash is inherently dollar-for-dollar more valuable than land that may be hard to liquidate or sell. Mom and dad could have given farmer a first-refusal opportunity—our example above was missing legal mechanisms to trigger an opportunity for farmer to buy or lease. The accountant probably leased to the neighbor at the same price farmer would have paid, but accountant did not give farmer that opportunity. A right of first refusal or a long-term lease to farmer would have eliminated that circumstance while still providing accountant with the same cash flow she realized by leasing to the neighbor.

Planning structures for a farm and ranch family may involve the use of entities such as limited liability companies or trusts and, where appropriate, a division of ownership between the land and the other assets such as machinery and livestock. Medical expenses and the rising cost of long-term care can also be of concern; without a plan in place, qualification for Medicaid assistance with those costs may require liquidation and/or disposal of assets including the farm or ranch to pay for necessary care. Finally, with rising property values and several years of high commodity and livestock prices, many farmers or ranchers may find the total value of their estate to be in excess of $5.34 million, necessitating some or a great deal of estate tax planning.

If you're a farmer or rancher, don't leave your heirs with an estate plan that splits up and destroys your operation by dividing the property and other assets through an auction to your neighbors. Consider updating your estate plan to ensure viability and transfer of your farm or ranch operation to the next generation. Whether you're worried about long-term care costs, being fair to your children, estate tax issues, or anything else farmers and ranchers face, there are options to consider when planning for the future.

Jenna Keller, Esq. is in the planning stages of a farm and ranch estate plan workshop to be held in Meeker, Colorado on October 29 and in Craig, Colorado on October 30. Join us at an upcoming workshop, or contact attorney Jenna H. Keller at 970-871-4858 or jkeller@cp2law.com for an individualized appointment in any of our four offices or in other communities throughout Colorado and western Nebraska. It is time to make a plan for your farm or ranch to stay in the family.

CP2's Attorneys

Contact CP2

Coan, Payton & Payne, LLC has offices conveniently located throughout Colorado, giving you easy access to our trusted team of legal professionals.

Practice Areas

- Banking Law
- Business Law
- Business Succession
- Commercial Litigation
- Creditor Rights
- Elder Law
- Employment Law
- Estate Planning
- Immigration Law
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- Natural Resources
- Oil and Gas Law
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