FEATURE:
ESTATE PLANNING & TAXATION

By David A. Handler & Kristen A. Curatolo

Planning at the Eleventh Hour: Part II

Augmenting a practitioner's checklist for clients near death

In our prior article,[1] we introduced a 20-point checklist for practitioners to consult when planning for clients who are near death and require last-minute (or eleventh hour) tune-ups to their estate plans. In light of recent case law, practical concerns and developments in technology (both in the digital and reproductive space), we now augment our original checklist with 10 new points for eleventh hour planning. We aim to cast a spotlight on overlooked planning opportunities and emerging planning issues. We've also included an augmented checklist for practitioners to keep as a handy reference (see "30-Point Checklist," p. 14).

Review FLP and LLC Agreements

Practitioners should review the client's retained powers over family limited partnerships (FLPs) or limited liability companies (LLCs) of which he owns an interest. In *Estate of Nancy H. Powell v. Commissioner*,[2] the Tax Court applied Internal Revenue Code Section 2036(a)(2) to hold that assets of an FLP could be pulled back into the gross estate of a decedent who held only a limited partnership interest.[3] IRC Section 2036(a)(2) includes in the decedent's estate assets he had previously transferred if the decedent retained "the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom."

In *Powell*, Nancy Powell's son, Jeffrey, acting under a power of attorney, formed an FLP to which he transferred cash and securities.[4] Nancy's revocable trust held a 99 percent limited partner interest (Nancy's interest), and Jeffrey contributed assets for a 1 percent interest as a general partner.[5] The partnership agreement allowed Jeffrey, as general partner, to determine the amount and timing of the distributions, and the partnership itself could be dissolved with consent of all partners (including Nancy).[6] Jeffrey, again acting under the power of attorney, transferred Nancy's interest to a charitable lead annuity trust (CLAT).[7] Nancy died one week later.[8]

The Tax Court held the transferred assets were includible in Nancy's estate. Even if Nancy's interest was validly transferred to the CLAT before her death, the plain terms of IRC Section 2035(a) would require inclusion in Nancy's gross estate of the value of the cash and securities that would have been included under Section 2036(a)(2) in the absence of the transfer because she relinquished her powers described above less than three years before her death. The Tax Court also held Nancy's ability as a limited partner, acting in conjunction with the FLP's other partners, to dissolve the FLP was a right "to designate the persons who shall possess or enjoy" the cash and securities transferred to the FLP "or the income therefrom," within the meaning of Section 2036(a)(2).

The *Powell* decision caused a stir in the estate-planning community because a partner's or member's ability to participate in a vote to dissolve an FLP or LLC is commonly provided under either the default rules of state law or in the governing instrument itself (that is, the partnership or operating agreement). Before *Powell*, only retained interests with some degree of control (such as a general partner or managing member interest) had been found to present the risk of triggering inclusion in a client's gross estate under Section 2036.[9]

After *Powell*, additional measures may be required to protect against estate inclusion. These measures

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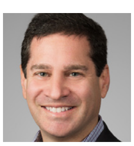

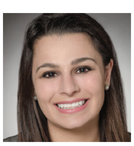

may include selling or gifting all of the client's FLP and LLC interests, amending the governing instrument or dissolving the entity. The client may consider selling or gifting his partnership or LLC interest to sever any Section 2036 ties to the entity's assets. If the client isn't expected to live for more than three years, only a bona fide sale of the FLP interests will do the trick. If the FLP interests would have been included in the client's estate under Section 2036 prior to a transfer of an interest in the property, then the interests will still be included in the client's estate under Section 2035(a) if he died within three years after the transfer. Moreover, even if the client is survived by a spouse, those assets can't qualify for the marital deduction. However, a sale would work even if the client died within three years of the transfer because Section 2035(d) provides that Section 2035(a) doesn't apply to any "bona fide sale for an adequate and full consideration in money or money's worth."

Alternatively, the client may amend the partnership or operating agreement to avoid triggering Section 2036. For example, such agreement may allow the client to control the business operations and investments, but another party would serve as the manager and have the power to control distributions and the power to dissolve the entity. When updating partnership and operating agreements, practitioners should be careful not to trigger IRC Section 2704(a) if voting rights are relinquished or eliminated. Section 2704(a) treats certain lapses of voting or liquidation rights as deemed transfers if the family controls the entity both before and after the lapse. Thus, if the partnership or operating agreement is amended to eliminate the client's voting rights, a small gift may be triggered under Section 2704(a) (for example, the change in value of a minority interest with and without voting rights). Additionally, cautious practitioners should ensure that any person designated as a general partner in the FLP isn't also designated the client's agent under a power of attorney. Or, if limited liability protection isn't a concern, the client may simply dissolve the partnership or LLC and distribute the assets to the partners or members in accordance with their interests.

Transfer Depreciated Assets

If the client dies owning depreciated assets (that is, assets worth less than their tax basis), the built-in loss will be extinguished at his death because the property's basis will be decreased or "stepped down."[10] To avoid this, he may consider: (1) selling the depreciated property and realizing the capital loss, (2) gifting the asset to his spouse, or (3) selling the asset to a grantor or non-grantor trust.

Section 1015 is based on whether a gift has occurred and isn't based on whether there's a new owner for income tax purposes.

Generally, when property is acquired by gift, the recipient takes the property with a carryover basis,[11] which is the same basis the donor had in the property. However, if such basis is greater than the property's fair market value (FMV) at the time of the gift (that is, the property is depreciated), the basis is the property's FMV for purposes of determining loss. As a result, the tax loss can't be gifted. A gift to a person or non-grantor trust falls under IRC Section 1015, as does a gift to a grantor trust. Section 1015 is based on whether a gift has occurred and isn't based on whether there's a new owner for income tax purposes.[12]

But, a gift to one's spouse will carry over the donor-spouse's basis in all events, even if the property is depreciated for determining loss, pursuant to Sections 1015(e) and IRC Section 1041(b)(2).

Also, one can sell depreciated assets to a grantor trust or a non-grantor trust. If sold to a grantor trust, Section 1015 doesn't apply because it's not a gift, the transaction is disregarded and the trust assumes the transferor's basis, preserving the loss for future use.[13] Similarly, if sold to a non-grantor trust, the loss

30-Point Checklist

Practitioners should keep this as a handy reference

Task

1. Plan for incapacity
2. Fund the revocable trust
3. Make tax-free gifts
4. Make charitable gifts during life
5. Use gift tax exemptions
6. Make taxable gifts
7. Reduce state estate taxes
8. Substitute low basis trust assets
9. Transfer depreciated assets to spouse
10. Make gifts of appreciated assets from spouse and others
11. Consolidate instruments
12. Grant or eliminate a general power of appointment
13. Exercise a limited power of appointment
14. Revisit designated fiduciaries
15. Review life insurance
16. Transfer partnership interests
17. Terminate old family limited partnerships (FLPs) and trusts
18. Terminate leases
19. Pay off promissory notes
20. Accelerate income in respect of decedent
21. Review governing instruments of FLPs and limited liability companies
22. Transfer depreciated assets to avoid "loss of loss"
23. Purchase grantor retained annuity trust remainder interests by spouse
24. Direct sales of homes or other assets in will
25. Transfer funds from individual retirement accounts to charity
26. Review charity pledge agreements
27. Review private foundation's organizational documents and structure
28. Oversee disposition of digital assets
29. Plan for disposition of stored genetic material and treatment of posthumous children
30. Plan for disposition of remains

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isn't realized under the related party rules of IRC Section 267,[14] but is preserved for future use.[15] For example, assume a client owns stock that he purchased for $100 and is now worth $50. If the client sells the stock for $50 to a non-grantor trust he created, his loss would be disallowed under Section 267(b)(4). A few years later, the non-grantor trust sells the stock for $150. When the non-grantor trust sells the stock at $100 profit, only $50 of gain is recognized because Section 267(d) provides that gain is recognized only to the extent that it exceeds so much of such loss as is properly allocable to the stock sold by the client (that is, the client's $50 loss).

Purchase GRAT Remainder Interests

If the client isn't expected to survive the term of a grantor retained annuity trust (GRAT), the client's spouse may consider purchasing the remainder interest (that is, the remaining property in the GRAT after the final annuity payment is made) from the GRAT's remainder beneficiary(ies) (such as a trust for the benefit of the client's descendants). While the value of the GRAT's property will be included in the client's gross estate if he dies before the expiration of the GRAT's term, the amount paid by the spouse to the remainder beneficiaries will be removed from the client's spouse's estate (without gift tax) if the client's spouse pays adequate consideration.

Example: Dad created a GRAT, the assets of which have since appreciated so that the remainder interest is now worth $1 million. The GRAT's remainder beneficiary is a grantor trust for the benefit of the children (the Children's Trust). If Dad dies before the GRAT terminates, then all of the GRAT's assets (including the $1 million remainder interest) is includible in Dad's estate for estate tax purposes. However, if Mom purchases the GRAT's remainder interest from the Children's Trust for $1 million before Dad's death, the value of the GRAT's assets will still be includible in Dad's estate, but $1 million is removed from Mom's estate and is transferred to the Children's Trust.

Ideally, the remainder beneficiary of the GRAT is an existing, irrevocable grantor trust so there's a party that can sell the GRAT's remainder interest without triggering any gains. However, not all GRATs are well-positioned for this planning strategy. For example, the remainder interest in some GRATs passes to a trust that will be created at the end of the GRAT's term. Or, if the GRAT's remainder interest passes to the client's

children or a non-grantor trust, the purchase of the remainder interest would result in taxable income or gain to them. Before implementing this strategy, the practitioner should ensure the GRAT agreement doesn't contain a spendthrift clause that prevents the remainder beneficiaries from selling their interests. Additionally, as illustrated by the Chief Counsel Advice Memorandum highlighted below, to avoid a merger argument from the IRS, the grantor shouldn't directly purchase the GRAT's remainder interests.

Practitioners know that deathbed transfers often raise the IRS' eyebrow, and sales of remainder interests are no exception. In CCA Memo 201745012 (Nov. 9, 2017) (CCA Memo), the taxpayer purchased the remainder interests from two GRATs he created with unsecured promissory notes and died the next day. As the remainders would have been included in the taxpayer's estate in any event under Section 2036, the CCA Memo held that it would completely disregard the remainders as consideration for the purchase. Thus, the taxpayer was treated as receiving no consideration, so the transfer of the notes were treated as a completed gift. While this was an unfortunate result for the taxpayer, better facts may have yielded favorable results. For example, Section 2036 may not have been triggered if a non-gift purchase of the GRAT remainder was made by someone other than the taxpayer (such as the taxpayer's spouse). As illustrated above, practitioners should have the grantor's spouse (or a lifetime qualified terminable interest property marital trust for the spouse) purchase the GRAT's remainder interest.

Direct Sale of Homes or Other Assets

Practitioners should encourage clients to consider whether the objects of their bounty really want their homes, art, jewelry and other tangible assets, or whether they're more interested in their value. The client's family members may not feel as sentimental as the client about

a vacation home or may not share the same affinity for an artist whose work comprises a huge collection owned by the client. It may be desirable for the client to have a family meeting to determine each family member's preferences and attachments to such assets. This simple gesture could preserve familial relationships and avoid infighting after the client's death.

If the client determines an asset's value is more coveted than the asset itself, the client may consider adding a clause to his will or revocable trust that directs the executor or trustee to sell such asset and add the proceeds to the probate or trust estate. The inclusion of this direction will allow for a deduction for the costs, fees and expenses associated with such sale for estate tax purposes.

> As states are split over whether a posthumously conceived child is entitled to inheritance rights, it's become key for a client's estate-planning documents to specifically address these topics.

Transfer Funds from IRA to Charity

If the client is interested in charitable giving and is at least age 70½, the client could make a tax-free transfer from an individual retirement account to one or more charities described in IRC Section 170(b(1)(a), other than a private foundation (PF) or donor-advised fund (DAF). This transfer is capped annually at $100,000.

This planning opportunity is attractive if the client has already planned on leaving IRA assets to charity. Further, using the IRA to fund charitable gifts rather than non-IRA assets will leave more to the client's heirs on an after-tax basis.

The transfer counts toward the client's required minimum distribution (RMD), while avoiding taxes on the withdrawal. Otherwise, the RMD for the client's year of death would be included in the client's gross estate and be subject to income and estate tax.

Review Pledge Agreements

Review unfulfilled charity pledge agreements to ensure the client stands in a position to fulfill such pledge. A pledge agreement is a contract between a donor and a charity in which the donor promises to make a contribution in the future. If the client dies without fulfilling the pledge, the pledge may be enforceable against the client's estate.

If the client has pledged a certain amount of money but doesn't have the liquidity to pay it, or if the client has promised a specific asset such as a painting or book collection that he no longer owns, the practitioner may save the client's estate time and legal fees by sorting out these issues before the client's death. For example, the client may direct some of the funds of an existing insurance policy to cover the cash pledge, or the client may be able to work with the charity to offer another painting or asset in place of the one that he no longer owns.

Note that payments from PFs can't be used to satisfy personal pledges because of the rules against self-dealing. For example, it's an act of self-dealing for a PF to satisfy an enforceable pledge of a disqualified person. Thus, the client can't use his PF to satisfy charitable pledges unless the pledges were made by the PF. However, an individual may be able to use his DAF to satisfy his personal pledge. In Section 4 of Notice 2017-73, the Treasury Department and the Internal Revenue Service announced they're considering proposed regulations under IRC Section 4967 that would, if finalized, provide that distributions from a DAF to a charity won't be considered to result in a more than incidental benefit to a donor/advisor under Section 4967 merely because the donor/advisor has made a charitable pledge to the same charity (regardless of whether the charity treats the distribution as satisfying the pledge), provided that the sponsoring organization makes no reference to the existence of any individual's pledge when making the DAF distribution. Notice 2017-73 states that it's intended to provide "interim guidance" on this issue that may be relied on[16] while the Treasury Department and the IRS continue to develop regulations that would comprehensively address DAFs.

Review PFs

If the client has a PF, practitioners should review the

organizational documents and composition of its governing body. The PF's bylaws should be examined with an eye toward how successor directors and officers are elected. Many well-funded PFs languish after the death of a family's patriarch or matriarch because leadership succession was never discussed with family members or key employees. Practitioners should also ensure that the PF's organizational documents and best practices are up to date, as some states have enacted legislation that adds additional requirements for PFs (such as conflict-of-interest policies and financial reporting requirements).[17]

If the client has made lifetime contributions to a PF of which he serves on the board, such contributions will be included in his estate.[18] While the estate will receive a charitable deduction for the value of such property, inclusion of such contributions may skew formulas in the client's will or revocable trust. For example, if the client gives a certain percentage of his estate to a beneficiary, then the beneficiary may receive a greater amount than planned. If estate tax inclusion is undesirable, the PF's bylaws or other governing documents can be amended to exclude the client from participating in decisions regarding distributions from the PF.[19] Instead, the client could become an advisory director of the PF. Even if the client decides to resign from the board, Section 2035 may still trigger estate tax inclusion if the client dies within three years after such resignation.

If funding formulas aren't adversely affected, estate tax inclusion may be a positive result. As mentioned above, the estate will receive a charitable deduction for such property, and the PF's assets receive a step-up in basis under IRC Section 1014(b)(9), which may reduce the PF's tax on its investment income. If the circumstances show that achieving a step-up in basis for the property is worthwhile, the client could be added to the board of the PF to trigger estate tax inclusion.

Disposition of Digital Assets

Practitioners should discuss disposition of digital assets with the client and review the client's will and/or revocable trust to determine whether they're consistent with his wishes. Almost all states have enacted the Revised Uniform Fiduciary Access to Digital Assets Act (the Act) or a modified version of it, which governs how a fiduciary may manage, conserve and/or access a living or deceased individual's digital assets.[20] Section 2(10) of the Act defines a "digital asset" as an "electronic record of which an individual has a right or interest."[21] In addition to photographs and documents saved on a client's personal computer or smart phone, this definition is expansive enough to include email accounts, emails, social media accounts (such as Facebook and Twitter), cryptocurrencies (such as Bitcoin and Ether), contact lists, calendars, text messages and more.

The Act provides that an individual may use an online tool to direct the custodian (for example, Facebook) whether to disclose to a designated recipient some or all of the individual's digital assets.[22] An individual's direction in an online tool trumps a contrary direction in such individual's will, trust, power of attorney or other record.[23] If an individual hasn't used an online tool to give directions, only then would a will, trust or power of attorney allow or prohibit disclosure to a fiduciary of some or all of the individual's digital assets.[24] An individual's direction in an online tool or will, trust or power of attorney will override a contrary provision in a terms-of-service agreement that doesn't require the individual to act affirmatively and distinctly from the individual's assent to the terms of service.[25] Practitioners should familiarize themselves with their jurisdiction's version of the Act or similar legislation.

The client should create an informal inventory of such accounts and discuss with estate-planning counsel who should (or shouldn't) have access to these accounts on his death. If the client has digitally stored photographs and documents that are stored on a password-protected computer or device, the client should determine whether he would like to share these items with family members and arrange how to disseminate (or destroy) such digital files. If the client doesn't want his designated executor or trustee to control or view his digital files, the client may consider naming a "digital executor" or "digital trustee" for the sole purpose of disposing of or deleting such files.

Assisted Reproductive Technology

Infertility is a deeply personal and sensitive topic for many clients. As of 2015, the Centers for Disease Control and Prevention's National Survey of Family Growth reported that 7.3 million (or 12 percent of) U.S. women surveyed received infertility treatments.[26] This statistic indicates a large number of people are using assisted reproductive technology (ART) to conceive children, which may involve the removal and storage of their

sperm and eggs to create and store embryos (collectively, stored genetic material). An extra layer of complexity may be added when couples who conceive a child using ART avoid sharing this information with their own families for conservative, religious and/or moral reasons or to protect against misunderstanding or prejudice toward their child from their relatives. This means clients might not divulge such information to their estate-planning counsel unless they're expressly asked.

As states are split over whether a posthumously conceived child (that is, a child who wasn't in utero at the time of the decedent's death) is entitled to inheritance rights,[27] it's become key for a client's estate-planning documents to specifically address these topics. Practitioners should check to make sure the definition of "children" or "descendants" is appropriate in their client's will and trust agreements given their client's circumstances. These definitions may also be applied to the client's grandchildren and their descendants. If the client has stored genetic material, the practitioner should ask what storage facility houses it, if there's any signed agreement governing its disposition, if he wants to conceive children after his death, and if so, whether such posthumous children should be entitled to his assets.

Disposition of Remains

Practitioners should discuss with the client whether he has religious, moral or personal desires about how his bodily remains should be handled. Discussing this topic may preserve family relationships and avoid emotional and expensive litigation. Famous examples of costly controversies include Anna Nicole Smith (who was buried in the Bahamas after a 3-week battle between her mother and her infant daughter's guardian over the right of sepulcher), Ted Williams (who was cryopreserved after his children litigated over whether he should be cremated) and Mickey Rooney (whose estranged wife argued he should be buried next to her, to which Mickey's conservator and estate attorneys disagreed).[28]

Some states have enacted statutes that allow for the appointment of an authorized representative to dispose of an individual's bodily remains, make funeral arrangements and arrange burial or cremation services.[29] If no such directive is in place, state law typically provides that the decedent's closest next of kin has authority to dispose of bodily remains (usually the surviving spouse or, if none, an adult child). If the client signs a health care power of attorney and disposition of remains directive that conflict, state law will govern and could result in dramatic litigation.[30]

At a minimum, practitioners should ask the client who, how and where: who should be in charge of disposing of his remains, how should his remains be disposed of (burial or cremation) and where he desires to be laid to rest.

Endnotes

1. David A. Handler and Kristen A. Curatolo, "Planning at the Eleventh Hour: A Practitioner's Checklist for Clients Near Death," *Trusts & Estates* (June 2016), *www.wealthmanagement.com/estate-planning/planning-eleventh-hour*.
2. *Estate of Nancy H. Powell v. Commissioner*, 148 T.C. No. 18, 2 (2017).
3. *Ibid.*
4. *Ibid.*
5. *Ibid.*
6. *Ibid.*
7. *Ibid.*
8. *Ibid.*
9. *See, e.g., Estate of Reichardt v. Comm'r*, 114 T.C. 144 (2000) (Internal Revenue Code Section 2036(a)(1) triggered when the decedent transferred to a family limited partnership (FLP) via revocable living trust that was partnership's only general partner); *Estate of Harper*, T.C. Memo. 2002-121 (May 15, 2002) (IRC Section 2036(a)(1) triggered even though the decedent's son had the power to control distributions from the FLP, in fact he did so in his father's favor and to help the estate pay estate taxes); *Estate of Strangi v. Comm'r*, T.C. Memo. 2003-145 (May 20, 2003) (Section 2036(a)(1) triggered when the decedent transferred almost all of his wealth (including his home) to the FLP so that he couldn't support himself for long without selling off the assets he kept in his own name, the decedent remained in the home without paying rent and FLP paid the decedent's medical expenses, estate expenses, specific bequest and death taxes).
10. IRC Section 101.
11. IRC Section 1014(a).
12. *See* Private Letter Ruling 9109027 (Nov. 30, 1990). For the same reason, the basis will be increased under IRC Section 1015 if gift tax is payable on a gift to a grantor trust.
13. Revenue Ruling 85-13.
14. IRC Section 267(b) treats certain transactions involving the grantor, beneficiary and fiduciary of a trust as a transaction among related parties. Specifically, the grantor and fiduciary of any trust, as well as the fiduciary and beneficiary of any trust, are deemed related parties. Sections 267(b)(4) and 267(b)(6). *See Wyly v. United States*, 662 F.2d 397 (5th Cir. 1981). Additionally, the fiduciaries of separate trusts are related parties if the same person is the grantor of

both trusts. Section 267(b)(5). Similarly, the beneficiary of one trust and the fiduciary of another trust are related parties if the same person is the grantor of both trusts. Section 267(b)(7).

15. Section 267(d) provides that, in general, if (A) in the case of a sale or exchange of property to the taxpayer, a loss sustained by the transferor isn't allowable to the transferor as a deduction by reason of subsection (a)(1), and (B) the taxpayer sells or otherwise disposes of such property (or of other property the basis of which in the taxpayer's hands is determined directly or indirectly by reference to such property) at a gain, then such gain shall be recognized only to the extent that it exceeds so much of such loss as is properly allocable to the property sold or otherwise disposed of by the taxpayer.
16. Specifically, Section 7 of Notice 2017-73 provides that, "Taxpayers may rely on the rules described in section 4 until additional guidance is issued."
17. Examples include the New York Non-Profit Revitalization Act (2013), with later amendments enacted in 2017, and the California Nonprofit Integrity Act of 2004.
18. *See* Rev. Rul. 72-552, which held the value of a donor's lifetime transfers to a charity was includible in the donor's estate when the donor was president of such charity and retained power of disposition over its funds.
19. *See* PLRs 200138018 (June 25, 2001) and 9725012 (March 19, 1997), which approve such arrangements. PLR 201323007 (June 7, 2013) approves a similar arrangement, which avoided inclusion of trust property in the donor's estate when the donor-director of the beneficiary private foundation (PF) wasn't permitted to vote on matters related to funds received by the PF from the charitable lead trust, and the donor had no power over the separate account into which all such PFs were segregated.
20. As of December 2018, over 40 states have enacted the Revised Uniform Fiduciary Access to Digital Assets Act (the Act), or a modified version of it, and five states have introduced the Act. *See* Uniform Law Commission, Fiduciary Access to Digital Assets, Revised (*https://my.uniformlaws.org/committees/community-home?CommunityKey=f7237fc4-74c2-4728-81c6-b39a91ecdf22*).
21. *Ibid.*
22 *See* Section 4(a) of the Act.
23. *Ibid.*
24. *See* Section 4(b) of the Act.
25. *See* Section 4(c) of the Act.
26. Centers for Disease Control and Prevention's National Survey of Family Growth, *www.cdc.gov/nchs/nsfg/key_statistics/i.htm#infertility*.
27. For example, New Jersey, Massachusetts and Arizona say the posthumous child is an heir of the decedent parent if certain conditions are met. *In re Estate of Kolacy*, 753 A.2d 1257 (N.J. Super. Ct. Ch. Div. 2000); *Woodward v. Commissioner of Social Security*, 760 N.E.2d 257 (Mass. 2002); *Gillett-Netting v. Barnhart*, 231 F. Supp.2d 961 (D. Ariz. 2002), *rev'd*, 371 F.3d 593 (9th Cir. 2004). However, New Hampshire, Alaska and California say the posthumous child isn't an heir of the deceased parent if certain conditions are met. *Eng v. Comm'r*, 930 A.2d 1180 (N.H. 2007); *Finley v. Astrue*, 372 Ark. 103 (2008); *Vernoff v. Astrue*, 568 F.3d 1102 (9th Cir. 2009). Some states, such as Illinois, Florida and New York, have enacted statutes addressing posthumous children. *See* 755 ILCS 5/2-3 (allows a posthumously born child conceived prior to death to inherit just the same as children already born; however, the child must be "in utero" at the time of death); Fla. Stat. Section 742.17 (a posthumously conceived child may bring a claim against the decedent's estate but only if the decedent provided for the child in the decedent's will); EPTL Section 41.3 (introducing four requirements that must be satisfied for a posthumous child to inherit).
28. Amy F. Altman, "The Morbid Litigation Lessons of Ted Williams, Mickey Rooney and Anna Nicole Smith," *Trusts & Estates* (February 2017), *www.wealthmanagement.com/high-net-worth/morbid-litigation-lessons-ted-williams-mickey-rooney-and-anna-nicole-smith*.
29. For example, California (Cal. Health & Safety Code Sections 7100, 7100.1), Florida (Fla. Stat. Ann. Sections 497.005(43), 497.607), New York (Public Health Law Section 4201(2)) and Illinois (755 ILCS 65/10) permit an individual to name an agent to dispose of their bodily remains.
30. For example, in *Carlson v. Glueckert Funeral Home, Ltd.*, 943 N.E.2d 237 (2011), the court refused to recognize the higher priority of a designated agent under a health care power of attorney to direct the disposition of a decedent's remains over another child of the decedent.

SPOT LIGHT

Meditating

Jeune fille assise sur la plage by Henri Lebasque sold for £43,750 at Christie's Impressionist and Modern Art Day Sale on Feb. 28, 2019 in London. Lebasque radically transformed the color palette used in his paintings after fellow artist Henri Manguin introduced him to the South of France. One of his notable commercial works was the decorations at the theater of the Champs-Elysées.