OCTOBER 20, 2022 - PROBATE AVOIDANCE PLANNING CALL TRANSCRIPT

Peter Braden: Hello everyone. This is Pete Braden with Godsey & Gibb Wealth Management. Thank you so much for joining us this afternoon to be on this call. A quick housekeeping note before we get started. There is a chat feature at the bottom of your screen if you have joined this call through the virtual zoom meeting and are not only on audio. If you have questions that you would like Rebecca or I to address at the end, please feel free to type them in the chat feature. Only you and the panelists/hosts will see the questions, not the other participants in the call. It would also be very helpful if you put your name and contact information with your question. If we are not able to address it during the call, which should take about an hour, we will certainly follow up with you afterwards to make sure that your questions get answered.

The genesis for this call was our clients. We have had a number of clients express an interest in learning more about estate planning topics. We do a number of these different types of calls and felt like this would be a good opportunity to address that need for our clients. I am going to lead off with a few quick words about Godsey & Gibb, for folks who are not Godsey & Gibb clients, before I turn it over to Rebecca to address probate avoidance planning.

Godsey & Gibb was founded in 1985. Frank Gibb, one of the co-founders, was based here in Richmond, VA, where our headquarters is located. Since then, we have added offices in South Carolina and Florida. We currently manage about $1.3 billion in client assets. We have an experienced investment team, something that I think is helpful for a cycle like the one we are going through right now – the difficult environment that we are going through this year. Our team employs a long-term investment approach that focuses on large, high-quality companies that have strong balance sheets and are industry leaders in their sectors. In addition, we prefer to invest with individual stocks and bonds wherever possible for greater risk control, although will certainly use exchange traded funds for smaller portfolios where needed. Our team has a number of different investment strategies that we employ that have a common theme – we focus on being risk averse and managing risk. Our clients have a tailored allocation across our different approaches based on their unique needs and objectives.

At Godsey & Gibb, we utilize a team approach. I am a wealth management advisor, and a primary point of contact for clients. We also have other team members that our clients can access when needed. If they have a tax question, they can certainly go directly to Mark Verdi and his team. If they have a portfolio question, they can go directly to Jean McGowan and her portfolio team. We think it is important that our clients are connected with multiple people at our firm and feel comfortable getting

the answers they need. We do understand that every client is unique, and that every client has different communication needs in terms of regularity or types of communications. Many of our clients have found these calls to be helpful, but others certainly prefer in person communication to get the information they desire, and so we certainly tailor our communication to each client.

From a services standpoint, we provide comprehensive wealth management. We started off in 1985 as a traditional investment manager, but since then we have added comprehensive financial planning to our menu. We have also added tax preparation and planning, with a number of our clients seeing the benefit of having one firm to handle both their investment needs and their tax needs in one place. Many of our clients have been with us long time, in some cases we work with multiple generations of the same family. This is why we also focus on family wealth advising. We can help with wealth transition issues and helping to educate the next generation of investors. Many of our clients are either retired or soon to be retired. If you are considering retirement, we can assist with questions as you prepare for retirement, such as helping you decide when you can feel comfortable enough to retire. We do not sell insurance products, but we can consult on insurance matters. It is an important part of the financial planning process, and so we can work with an outside group to help provide price quotes and information on long term care insurance, life insurance, or on other types of insurance needs. Many of our clients are charitably inclined, and we are available to assist them in doing so in the most tax-efficient manner possible. Finally, estate planning assistance. We are not attorneys, so we do not draft documents, but we can coordinate efforts with high-quality firms like *Thompson*McMullan to help make your estate planning issues are addressed. This can include making sure accounts are properly titled and funded.

That is enough about us as they say. Let me now turn and give a quick introduction for Rebecca Bowen. She has a very impressive biography. I do not have time to read it all, but I will point out the highlights that are relevant to our conversation today. Rebecca is a director with *Thompson*McMullan, a law firm headquartered here in Richmond, VA. In her role, she helps individuals and families create estate plans that address their wishes in the event of death or disability, among other roles. She has been recognized by Virginia Business Magazine as a legal elite in several different categories, including the taxes, estates and trust category. She has been selected to the Super Lawyers Virginia list in the estate planning and probate category, as well as in rising stars. She earned her undergraduate degree from the University of Virginia. All the Wahoos out there will be happy to hear that. Then, she earned her law degree from the University of Richmond. She is a member of the Virginia State Bar, the Richmond Bar Association, and the Richmond Estate Planning Council. Rebecca was previously an adjunct professor in estate and gift taxation at VCU, so hopefully she will be able to put some of those teaching skills to work here for us today. Finally, and maybe most importantly, she is a board member of the Richmond Animal League

and has some adopted dogs at home. This is something she has in common with a lot of our clients – her love of animals. With that, I will turn it over to Rebecca.

Rebecca Bowen: Thank you, Pete. I think you just gave us an idea for our next session. We can talk about pet trusts and caring for your pets at death if there is an interest there. Thank you for the introduction, thank you to Godsey & Gibb for organizing and hosting this event, and thank you to everyone who is joining us on the call today.

As Pete mentioned, I am at *Thompson*McMullan in Richmond, VA. To tell you a little bit about our firm, we are a mid-sized firm. We have our main offices in downtown Richmond at 100 Shockoe Slip, and then we also have an office in Midlothian at Westchester Commons. You'll see on this slide; we cover a broad range of practice areas. Personally, I focus primarily on the estate planning and trust administration piece. We have about 26, I think now 27, attorneys and we represent companies, state, and local governments, and most importantly individuals. To move on into the slides, I am going to turn off my video so that you all can focus on the slides.

Today, our topic is probate avoidance planning. And you know I have a lot of clients that come into the office and say, "I want to avoid probate." The first question is really – what is probate? What is it we are trying to avoid? Why are we so concerned about avoiding probate? Some of you may have already gone through this process and know exactly why you may want to avoid probate. For those who have not, probate is essentially the process of going down to the Clerk's office after a decedent dies and reporting the decedent's will with the Clerk. Keep in mind that probate is different than qualification of a personal representative. Often those two things happen at the same appointment, but they do not necessarily have to. To clarify a little bit of terminology, when we are talking about a personal representative, that can mean either an administrator or an executor. An executor is what we call the personal representative if the decedent died with a will. An administrator is what we call the personal representative is called if the decedent died without a will. Many times, you will hear those terms used interchangeably, but most often we will talk about executor or personal representative.

This leads to the question – what actually happens at a probate appointment? Again, you are making an appointment with the Clerk's Office, and you have to fill out a number of different forms. There is a probate information form, a list of errors, a probate tax return, and maybe some other ancillary forms depending on the estate. If the decedent had a will, you bring the will with you to the Clerk's office and you are essentially telling the clerk that you are the named executor, this is the last will and testament of the decedent, and you would like to have it recorded. If you are qualified as executor, you basically are promising to administer the estate in accordance with the will. I think one of the most important things to keep in mind when we are talking about probate avoidance planning, is that there are assets that pass-through probate and there are assets that pass outside of probate. If we are avoiding probate,

the goal is to set up all your assets in a way that they pass outside of probate. When we are talking about probate assets, those are only assets that are in the decedent's individual name, without a beneficiary designation, and are not jointly owned with rights of survivorship with another individual or individuals.

Beyond the hassle of having to make an appointment with the Clerk, and going down to the Clerk's office, some other reasons to avoid probate are the fees and costs that are associated with probate. The probate tax is currently $0.10 per $100 in Virginia. If you are talking about a $500,000 estate, it is only a $500.00 probate tax. To me, that alone is not the sole reason, or even the most important reason to avoid probate. That is manageable. Also, quickly, this is a little outside our topic, but the probate tax is different than the “estate tax.” When people talk about the estate tax, they are talking about the federal estate tax. Virginia does not have a state-level estate tax. If there are any participants on the call in other states, your state might have a state-level estate tax, but Virginia currently does not. The federal estate tax is only imposed on estates that exceed $12,060,000 currently. So, it is a high number. We will say $12 million to be easy and it has nothing to do with the probate process. Regardless of whether your assets go through probate or pass outside of probate, they are most likely going to be subject to that estate tax if they exceed $12 million. Other fees, you are going to have include some Clerk's fees, some recording fees, and other fees along those lines. Also, the decedent’s will will become a public record when you probate it, so it is kind of like recording a deed. You could have a title company that is going to go back and pull up that will at some point. Anybody who is interested can go and pull it up someone’s will. For me personally, I do not care. No one would be surprised what my will is going to say. For some people, they do not want that publicity around their will.

The last two bullet points are probably, in my mind, the more significant reasons to try to avoid probate. The first is that probate triggers the requirement to report to the Commissioner of Accounts. The Commissioner of Accounts is a semi-judicial official. There is one for every jurisdiction, city, or county in Virginia. When you probate a will and qualify an executor, that triggers a requirement for the executor to first file an inventory with the Commissioner which is due within four months of the qualification, and then to file an annual accounting with the Commissioner which is due 16 months after qualification and covers the first year. You then have to file an annual accounting each year thereafter, as long as the estate is open. The accounting is a bear. Commissioners are very particular in terms of how they want information recorded, and you essentially have to report every piece of income and every distribution that comes out of the estate. You also have to provide documentation to support that. This includes copies of all the bank statements, the estate brokerage account statements, and copies of receipts. In other words, anything that can document why you paid a bill. The expectation is that an executor is supposed to prepare the accounting. More often than not, for estates that we represent, we prepare the accounting because they're difficult to prepare.

There is also the potential delay in administration when you are waiting for a probate appointment. It depends on the jurisdiction you're in, but a lot of times you call up the Clerk's office maybe a week after death and tell the Clerk you need to make a probate appointment. They are probably scheduling at least two weeks, sometimes a month, out from when you call. This means you are looking at, on average, maybe a month from death before you actually get a probate appointment. During that time period, nobody has authority over the decedent's probate assets. Where I have seen this really become a problem, is when you have a small business owner. Let's say you have an individual who is the sole member of an LLC. The LLC owns a restaurant. The individual dies unexpectedly. They were the only owner of the LLC and they were the only signatory on the LLC bank account. There is nobody that has access to that bank account to continue to process payroll, to pay food vendors, to essentially continue to operate the business while you're waiting for that probate appointment to happen. There can be significant harm that results from having to wait that period of time, and a lot of it can be avoided by doing the proper planning upfront for that LLC interest to avoid probate. We will talk about how that is done in a little bit.

All right, so trust agreements to avoid probate. I put these first, because this is probably the most common probate avoidance technique – to have a pour-over will to a revocable trust. Some of you are probably either familiar with this or already have this in place, which is great. So instead of the will saying I give everything to my spouse, and if my spouse predeceases me, then to my children; the will says I give everything to my trust. Then, the trust agreement is where we provide that everything goes to the spouse and then the children. The second point here, is really the key point though. That is all great, but for you to utilize that trust agreement to avoid probate, you have to take the next step of re-titling assets and setting up your beneficiary designations so that those assets will pass directly to the trust at death, or maybe even transferred to the trust during your lifetime.

This is where financial advisors like Pete and the other folks at Godsey & Gibb are incredibly helpful to have involved as part of your estate planning process because this is the part that clients forget to do. We tell them to do it, and then it is easy to just put the documents on the shelf and think I will deal with it later. Your financial advisor, at least for the assets that they are involved with, can help you fill out all of the forms and set up the beneficiary designations the way they need to be done to pass to the trust. We will frequently work with these advisors in terms of the appropriate language and information for those forms. The pour-over will to the revocable trust is a very common planning technique for probate avoidance. The second step (which is on the clients), is equally if not more important in terms of setting up the beneficiary designations and the asset ownership.

Talking about beneficiary designations to avoid probate, you are probably already familiar with many of them – life insurance and retirement assets are very common ones where you have to name a primary

beneficiary and a contingent beneficiary. Hopefully when you apply for a policy or set up a retirement account, someone has prompted you to do that. It is always a good idea to double check beneficiary designations, because a lot of times, if you fail to set up a beneficiary, the default may be to your estate. If the estate is the beneficiary, whether you have put it that way or it is the default result, those assets become probate assets. If you have an individual or trust named as the beneficiary, then those assets are going to pass directly to your beneficiaries and avoid probate. For bank accounts and brokerage accounts, you can also put in place effectively beneficiary designations. The terminology is a little different. For bank accounts, it is a Payable on Death (POD) designation. For brokerage accounts, it is a Transfer on Death (TOD) designation. Either way, it is the same effect where at your death, that account is going to transfer on death or pay on death to the beneficiary you have named. It is not a probate asset. It goes directly to the beneficiary as soon as they have a death certificate available to provide to the financial institution.

The last one, real estate, is very interesting and kind of a new development. I say new, but then I realized it was 2013, which is longer than I had realized we have had that in place. Virginia allows transfer on death deeds, so even for your real estate, you could put a transfer on death designation for the real estate to pass directly to an individual or to a trust. We are more comfortable with these now because at first, we were not really sure how the title companies were going to handle them and what they would require. They have been around long enough now, that everyone is mostly on the same page that these work, and it has provided an easy way to transfer real estate at death outside of the probate process. Keep in mind, with all of these beneficiary designations, except for unusual circumstances, they are revocable. Even if you have a real estate transfer on death deed, you can revoke it and change it at any time. None of this is set in stone, unless for some reason, you are making an irrevocable beneficiary designation.

Joint ownership to avoid probate, that is another. There are certain types of joint ownership of property where the asset is going to pass directly to the joint owner and not be part of the decedent's probate estate. To give you a quick summary of the different types of joint ownership:

- The first one is tenants in common. Let’s say you inherited real estate with your sibling from your parents, and you each own 50%. Most likely, you inherited that as what's known as tenants in common. So, you own 50% individually in your name, and your sibling owns 50%. Your 50% at death, is part of your probate estate. It is going to pass in accordance with your will or intestate succession. It does not automatically pass to the other owner.
- Another type of joint ownership is joint tenants with rights of survivorship. Again, the situation where you and your sibling have inherited property and instead of owning it as tenants in common, you have decided to own it as joint tenants with rights of survivorship. That means

that at the death of one of you, the ownership is going to pass directly to the survivor. That is a type of ownership that will avoid probate because that right of survivorship designation means that it automatically, by operation of law, will pass to the surviving owner.

- The third type of joint ownership I wanted to mention is tenants by the entireties. This is only for spouses, and it is a joint ownership by spouses that has the similar "right of survivorship" quality. When one spouse dies, the property automatically passes to the surviving spouse. If you are married, you most likely own your house as tenants by the entireties with your spouse. Another benefit of tenants by the entireties, is that it provides protection of the asset from the individual creditors of one spouse. For instance, if an individual was in a car accident, and they were the cause of that accident, then got sued, the claimant could not come after your house if you own it with your spouse as tenants by the entireties. This is because that is your individual creditor, they cannot touch that tenants by the entireties asset.

Often, we will see real estate and other assets owned jointly with the rights of survivorship provision. This is a way to avoid probate of that asset because it is automatically going to pass to the survivor.

I did want to point out a few pros and cons though. Very frequently, especially when we have a single individual, we will see that the client will put a child on a bank account with them, often with rights of survivorship. You are not just giving the child the right to sign the account. This is not the power of attorney situation. You are actually transferring joint ownership of the account to the child. There are some pros and cons to doing that. A pro is that the child has immediate access to those funds, both during your lifetime and at death. Your immediate expense at death is really going to be funeral expenses. Often what happens, is that the children or your other family members are going to have to advance those costs, and then be reimbursed by the estate later on. If you have a child who is a joint owner on an account, they can immediately pull funds from that account to cover your funeral. The downside of this, is that number one, because they are a joint owner, that bank account is potentially subject to the child's creditors if the child had a creditor claim. Where I see it get particularly sticky, is the fact that that joint account will pass solely to that child. If there were three children, the child may or may not be willing and interested in sharing those funds with their siblings. It is going to depend on your family dynamic and your family situation for whether you feel comfortable holding an account jointly in that way. I have seen it go both ways, as you can imagine. There is legally no obligation for the child to share that account with the siblings. They may be willing to, and they may not.

That leads into the powers of attorney. We are talking about those joint accounts and the benefit of the child as the joint owner and having access to the account, but that can also be done through a power of attorney. Power of attorney is appointing an agent to make financial and legal decisions for you. It is anything from accessing your bank accounts, to signing contracts on your behalf, to taking out loans,

to signing deeds and checks. If you do not have a power of attorney, and you were to become incapacitated, somebody would have to petition the court to have a conservator appointed to handle your legal and financial affairs for you. The downsides of that, is there is a cost and time involved with the conservatorship. You also do not get to pick who you want appointed as conservator, because at that point you are incapacitated. The conservator also has to file accountings on a regular basis with the Commissioner of Accounts. This is similar to what we talked about before, where you have an executor who is reporting to the Commissioner of Accounts.

Looking at powers of attorney, there are a number of different types of power of attorney. I mean, a lot of times there is terminology that gets thrown out related to general versus special and durable powers of attorney. Most often, what I recommend is a general power of attorney. A special or specific power of attorney is limited to a specific transaction. When you bought your house, you may have signed a specific power of attorney that appointed the closing attorney to sign any kind of ancillary last-minute documents related to the closing. General power of attorney is what most clients need – where we want to appoint someone to handle financial affairs for you. Durable power of attorney basically means that it survives your incapacity. The main point for the durable power of attorney, is to make sure that if you became incapacitated, someone could handle your affairs for you.

There are two different types of durable powers of attorney, and this is a conversation I frequently have with clients. You can have an immediate power that is effective as soon as you sign it, or you could have what is called a springing power, which only becomes effective if there is some sort of certification (usually from a doctor) stating that you are not able to handle your financial affairs. For many clients, when I explain this, their gut feeling is, “I want a springing power, I don't really want to give somebody that authority unless I'm not able to act.” The scenario I try to give you where that may not be in your best interest, is that I had a client who had a stroke. He was in a rehab facility. Physically, he was incapacitated. Mentally, he had no concerns about his mental capacity. He was fully able to understand financial and legal affairs. His daughter was named under the power of attorney, and it was a springing power of attorney. She went to the bank to try to handle paying some bills and getting things caught up with bills at the house. She could not use the power of attorney because there was no certification that he was mentally incapacitated, because he was not. He certainly could not get down to the bank or do what he needed to do though. That is really an example. I would usually recommend an immediate power, because it gives a lot more flexibility to your agent. The caution there, is that you absolutely have to pick somebody you trust. If you do not have somebody you trust, then do not name them, because there is certainly room for abuse.

I also wanted to mention powers of attorney terminate at death. This is another point that often leads to confusion. I will have a client call me up and say their parent has passed. Again, this goes back to

accessing a bank account. They say, it is fine, I have the power of attorney, I can pay the funeral expenses with the money in the account. They cannot. They cannot use the power of attorney after death. It is only while the individual is living. This ties back into the probate avoidance planning piece. In Virginia, we have adopted what is called the Uniform Power of Attorney Act. The Uniform Power of Attorney Act provides a long list of things your agent can do, and then has a shorter list of things that require specific authority and the power of attorney for your agent to do. We often refer to these as "hot powers," because they have the potential to significantly change your estate plan. It is things like the power to make gifts; to create, amend, revoke, or terminate a trust; create our change rights of survivorship; create or change beneficiary designations; and then a few others that really are not as important. If you think about giving somebody the ability to change a beneficiary designation, or even change your trust, they could retitle all your assets and change your beneficiary designations in a way that you may not want. The other side of that, is that including these hot powers can be really useful, and then implementing a probate avoidance plan.

In the common scenario where you have come to me, we have put in place your pour-over will and your revocable trust agreement, I have given you instructions for updating your beneficiaries and retitling your assets, and you have gone home with it and put it on the shelf. Then, one of your children calls me and informs me that you no longer have the capacity to implement these changes. In that case, we want them to have the ability to change maybe the rights of survivorship or beneficiary designations. The way I usually address this in my power of attorney, is to give some of these powers, but that they have to be exercised in a manner consistent with your estate plan. That, I think, still gives the agent the ability to follow through with this probate avoidance planning without changing the estate plan itself. If the agent has a letter from me that says you should update the beneficiary designation to your trust, that is pretty clear in that case, that that is going to be consistent with your estate plan. Also, if you have, and I cannot think off the top of my head when the Uniform Power Attorney Act was adopted, but if you have an older power of attorney, these things may or may not have been addressed in your older power of attorney. It is good to get those reviewed and updated on a regular basis to make sure you have any changes in the law addressed.

Related to power of attorney, and I wanted to just talk about these because there may be some confusion about authority between the two documents, is the Advanced Medical Directive (which appoints an agent to make decisions about your medical care). The agent under your Advanced Medical Directive can only act if you are not able to do so, so that is a key distinction. We talked about the power of attorney and giving your agent immediate authority. Somebody cannot come in and make health care decisions for you if you have the capacity to do that. That is always your decision to make first. We often include, as part of the Advanced Medical Directive, a living will. If your death is imminent, you are

in a persistent vegetative state, a coma, the doctor said you are not going to recover; it is the direction that you would want your agent to follow, to pull the plug. We can draft that language however you want, but that is usually where we start because that is what most clients want.

We have been talking about a few aging and caregiving concerns. The importance of power of attorney, advanced medical directives, and the capacity to make a will and trust agreement. Again, consider including some of those “hot powers” in your power of attorney, so that you do have some flexibility for your agent to be able to follow through with beneficiary designations and probate avoidance planning. Capacity is a key point too, because these are all things you want to address sooner rather than later, because we never know what is going to happen. Having it done, is going to make everything a lot easier for your children and your family members going forward.

The last point I had was on pre-need funeral and burial or cremation arrangements because I have seen this come up more and more. I think it is one of the best things you can do for your family, to put in place some sort of pre-need contract with a Funeral Home to plan in advance for your burial and cremation. Tell your family what you would want in that situation. They are going through so much right after death, that they the less decisions they have to make in that regard (in terms of trying to think about what mom or dad may have wanted), the easier it's going to be for them.

I think at this point, we are going to send it over to some questions. We actually have a good amount of time. I apologize if I spoke quickly. I tend to do so. I try to consciously slow down. I am going to turn my screen back on and I think Pete's going to jump in as well, so we can answer any questions that folks might have at this point.

Peter Braden: Thanks, Rebecca. Appreciate it. We do have a few questions here and I think we will have time to get through them all, but if not, again, we will address them later. The first question I have here, or we have here is, if you have a married couple and the executor of your will is a family member out of state, in this case Massachusetts, will a trust be sufficient for him to carry out our wishes upon death of both of us, or do we need to name an executor in state?

Rebecca Bowen: Yes, that is a great question and that really ties into the probate avoidance planning piece and why it is also another good reason to avoid probate if possible. In Virginia, if your executor is a non-resident of Virginia, they will have to post surety on their bond when they qualify in the Clerk's office. A few terms I threw out there, the executor's bond is the executor's promise that they are not going to run away with the money. They are going to administer the estate in accordance with the will, they are going to do the right thing. You go into the Clerk's office, you raise your right hand, and you swear all that is true. You can never waive an executor's bond. The executor always has to give their bond in that regard. Surety on the bond is another piece of the bond, and it is essentially the

requirement that the estate pays for an insurance company to come in and issue an insurance policy on the executor's bond. If you have a $1,000,000 estate, then the insurance policy is going to cover the executor possibly running away with $1,000,000. For most wills, you are going to see the language that you waive surety on the executor's bond, because you do not want to add that extra cost to the estate. Even if you waive surety on the bond though, in Virginia, if you have a non-resident qualifying as executor, the court is required to require surety on their bonds. This is simply because it is a lot harder for a Virginia court to reach an out-of-state resident than it is an in-state resident if the executor were to do a bad thing. One of the work arounds to that, is again, avoiding the probate process in general so your trustee does not have to give surety on a bond and the trust is not overseen by the Clerk's Office. The courts in Virginia do have jurisdiction over the trustee and the beneficiaries if the trustee did something wrong, but there is not that affirmative duty to go into the Clerk's office and provide surety. If you have a non-resident who you really want to be the one responsible for administering your estate and administering the trust, that pour-over will to a revocable trust structure is great, but again the most important part being that you need to then retitle assets and change beneficiaries to the trust. I will say, this is all very general advice. You know your situation. I do not know the specifics of it, so that that is very general advice. The residency of your named executor is important, and if they are not in Virginia, all the more reason to do the probate avoidance planning, so they don't have to qualify.

Peter Braden: Thank you. There are some other elements to that question which I think we will have to take offline to address afterwards, but that is helpful. Another question that has come in, "I am a single person with one child who is the sole beneficiary of my will, is my power of attorney, and knows all of my financial final wishes. My niece is secondary. In case something happens to me and my daughter at the same time, I have a detailed will, but is a trust of any more benefit to me?"

Rebecca Bowen: That is a great question as well, and again goes back to the scenario where it depends on your individual situation. If you have one child, your child is the beneficiary and also the executor under your will. The estate administration process is actually going to be easier for that child, because when you have the beneficiary and the executor as the same person, you don't have to file that full accounting with the Commissioner of Accounts. You get to file what is called the statement in lieu of account. At the very end, it says I have paid all the creditors and I have distributed everything to myself. You are only accountable to yourself in that scenario. You are not having to account to any other beneficiaries of the estate, so that is an easier estate administration process. You can also set up assets with your child as the beneficiary, the life insurance and the retirement, POD and TOD on the bank accounts or brokerage accounts, and on any real estate. Where there is a possible downside, is that all works fine as long as your child survives. If your child is predeceased, if you were able to update everything to, I believe you said it was your niece, that's great. If for some reason you have become

incapacitated at that point, then that process could be a little harder for the niece if you have not been able to update the beneficiary designations. Again though, kind of going back to the power of attorney, the Niece may have the authority to do that through the power of attorney.

Peter Braden: Let's see another question here. If a decedent's home still has a mortgage but lots of equity, how do you pass that on to beneficiaries?

Rebecca Bowen: The mortgage has to be paid off by you somehow. If the house just passes under the will, or even as a TOD, that mortgage is going to stay in place. The mortgage company has a dead of trust on the house, which is security on the house, so those beneficiaries are not going to be able to sell that house until the mortgage is addressed. Somehow, the mortgage does have to get paid off. Whether it is from the sale of the house, or from other assets of the estate. The mortgage most likely says that the decedent's death is an event of default under the mortgage. This means the beneficiaries, if they are going to keep the house, they are going to need to come in and refinance that mortgage. If they are going to sell it, then banks are usually very willing to work with beneficiaries for a reasonable period of time if they see that there is a process of getting the house ready to sell to pay off the mortgage. Then, whatever is above the mortgage, the beneficiaries would get to keep.

Peter Braden: Great, thank you. Next question, and obviously this has been addressed somewhat throughout the whole presentation, but you may have some other comments here. What are the most common pitfalls and missteps to avoid in the estate planning process?

Rebecca Bowen: I think, as I mentioned a few times, failing to take the next steps of updating beneficiary designations or retitling assets to your trust. We are just not updating beneficiary designations at all. You know, I frequently have clients that come in and I will say, “Great, you've got this life insurance policy. Who is the beneficiary?” They say, “Well, I think it's my mom, but she passed five years ago.” They just have not thought to even look at it. Even the process of sitting down with me to draft documents, we will talk about these things in terms of making sure everything is up to date.

The other thing I have seen happen more frequently recently, is just not being able to locate or forgetting about assets. When we meet with clients, we have an intake form, where we ask them to list all of their assets. We are making sure that we are addressing everything we need to address in terms of retitling and beneficiary designations. It is also helpful, if they do pass or when they do pass, and their children or their executor comes to us, we can say well as of this date they had these assets, so let us look here. We used to tell executors, that if they watched the mail for several months, they would get all the account statements they need, because account statements were sent monthly or quarterly by mail. That is not the case anymore. Very few people get account statements in the mail, they get them online. I tell clients when you sign your documents, keep them somewhere safe, and include with them a list of

where your assets are located. You do not have to include values or account numbers if you do not want to, but at least put a general listing of where the executor needs to go to find everything. If you have a vanguard account, you have a Roth IRA here, you have a life insurance policy through mass mutual, so that they at least know the financial institutions to contact.

I will mention as part of this, and I think it was in one of the slides and I glossed over it, Virginia does have a small estate act process. Just reminding you this, because I have a case now where Mom did everything she was supposed to do. We had updated all the beneficiaries, we retitled assets, everything passed outside of probate. Then after her death, her daughter, who was the executor, called me (it was about five months later) and said, you know, we were just cleaning out her file cabinet and she has got $10,000 of savings bonds. They were from the eighties. Nobody remembers these. We forgot all about them. Mom forgot about them. Nobody was on top of that. In Virginia, if you have probate assets that are under $50,000, which was the case here because everything else passed outside of probate, you can go through kind of a small estate process by probating the will, but you do not have to qualify an executor. Probating the will is just going to the Clerk's office and recording the will. Qualifying the executor is the piece that then triggers all the filing requirements with the Commissioner accounts that we usually want to avoid. It is a much easier process if you only have to probate the will and can use a small estate affidavit to then transfer those savings bonds. We learned as part of this process; the Department of Treasury also has their own small estate act form. you need to use both the estate form and the Department of Treasury form. The lesson there being do not run out and immediately qualify and probate the will, because you might not need to. There might be some easier ways we can get assets transferred.

Tying that back in, try to remember what assets you have and keep an ongoing list. I think tax time is a great time to pull out your estate planning documents and pull out that list. Update that list as you need to, because you are looking at all the information you have got for your tax returns, and a lot of times that will remind you of what might need to be updated on the asset list.

Peter Braden: I think this is a similar question here, or related, and I will expand on it a little bit. How can you address online accounts and accessing and shutting those down? I'll expand on that in terms of any best practices you've seen in terms of Omega files or documenting things that make things easier for an executor or executors.

Rebecca Bowen: That question is really kind of a tough one, and a hot topic right now as you can imagine, because more and more of our lives and financial transactions occur online. The difficulty is that every provider, when you click that little terms and conditions and you sign up for every account, is going to address this, but in maybe a different way than you would like. You do not get to negotiate that with them. We include language and in both our wills and our trust agreements around digital

assets. Essentially, specifically authorizing the executor to access your digital assets. That being said, you may have heard horror stories of Yahoo refusing to release password information and they are really within their rights to do that based on their terms and conditions. I kind of feel that there is a difference between the financial assets and maybe your Facebook account, your Instagram, your TikTok, and all that kind of stuff. There is a process through Facebook, there is a process through all of those service providers to actually close down those accounts. I have found that that process is a lot of times, more headache and heartache than it is really worth.

In terms of the financial accounts, you really are not supposed to access anyone else's financial accounts online after their death. I am not going to say it does not happen, because people do it all the time, but to me it is for information purposes. You are trying to locate assets, and then you are calling Vanguard. Or you are calling someone on the phone and starting the proper procedure of making a claim and getting the assets transferred. You should not log in to the Vanguard account under your decedent's username and password and directly transfer assets from there. You do not have the authority to do it that way. I think that the sharing of the passwords can be helpful to gain information, but you really should not use it to transact any kind of business for the decedent. There are a lot of password vaults out there, and I cannot really provide a professional opinion on them, that people use. LastPass, and maybe one called 1Password, I think. I do not really know, and I am sure they can be hacked as well. As long as you've got somebody who has that information to access those, I think that's something else you could leave with your kind of list of documents.

Real quick, I will mention this. I do not know if anyone has any cryptocurrency, that is another area that we are trying to keep up with the rest of the world on, in terms of how we handle that. I am learning so much about it – basically, you need a key, and if you lose that key that has a bunch of numbers and letters on it, you do not have an asset anymore. Make sure you have that information in some kind of format to leave for your executor, or that asset could be lost. I have heard the recommendation of putting it on a thumb drive, keeping that thumb drive with your original estate planning documents, and again letting your executor know that you have those assets because that is not going to come through on a statement in the mail. This is becoming more and more important.

Peter Braden: I've got another question here. In the state of Virginia, if your executor is family out of state, does the out of state executor have to have a Virginia resident present when approaching the Commissioner?

Rebecca Bowen: It is not so much the Commissioner that is the issue, it is the Clerk's Office when you qualify. If you have a non-Virginia resident, they have to post surety on their bond. If you have a co-executor, where you have one resident of Virginia and one non-resident, then they will let you waive the

surety. You have got to have a Virginia resident as a co-executor, for that non-Virginia resident to not have to provide the surety.

Peter Braden: We might have time for one more, or maybe two more questions. If I have a will and/or I have titled my assets to best avoid probate, do I still have to file an estate tax return?

Rebecca Bowen: That is a big question. Again, that is kind of related to the distinction between probate tax and estate tax. The estate tax, and there are certainly exceptions to this as there are lots of fancy trusts we can draft to get assets out of your estate from an estate tax standpoint, but generally your estate consists of all of your assets at your death, regardless of whether you've done any probate avoidance planning on those. That is going to include the life insurance that has the beneficiary designation, the retirement accounts, all of that is included as part of the estate for estate tax purposes. Again, the estate tax exemption amount right now is $12 million. It is a generous exemption amount. As long as your total assets, your total worth is under $12 million, you don't have to worry about estate taxes. That is per individual. When you have a married couple, you have $24 million before you need to start worrying about that. If you are close to $12 million, there is still some tax planning we would want to incorporate in your documents. The estate tax is different than the probate tax. The probate tax is your local tax that you are paying to your local Circuit Court. It is not nearly as high as the estate tax. It is going to be on every dollar of the probate estate, but it is not as high of a tax.

Peter Braden: All right, very good. Well, I think that gets us through the questions that we have, unless there is a last minute one. I really want to thank you, Rebecca, for joining us for the call to address a topic that comes up in conversations all the time. As you know, not everybody has legal training, and there are a lot of things to know here. It can be a real challenge, but we appreciate you getting on, and talking with us about these issues today.

Rebecca Bowen: My pleasure. Thank you for having me.

Peter Braden: Thanks so much. Thanks all.

Rebecca Bowen: Thank you everyone.

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