WEALTH STRATEGIES

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Wealth Strategies with Loreen Gilbert, CIMA, AIF, CRC, CLTC

Insights With the Experts

We are now fully emerged in the fall season. Our families are back-to-school, our companies are back-to-work and we ourselves are back to thinking about building wealth. In fact, now that we are in the last quarter of the year, there are numerous wealth building considerations: estate planning techniques, year-end tax planning, investment management strategies and tangible asset collections.

This year, we have assembled wealth experts from all of these fields: estate planning, taxation, wealth management, retirement plan administration and the intriguing world of jewels.

Let's begin our panel with **Tim Kay, partner at Snell & Wilmer**:

Tim Kay

Loreen- With the Tax Cuts & Jobs Act passed in December 2017, should the average person revisit their estate plan?

Tim- Absolutely! Many estate plans that were written over the past few decades relied upon formulas to allocate a tax-wise amount to a credit shelter or bypass trust. A formula written in 1999 would cause up to $600,000 to be allocated to a credit shelter trust. That same formula with a death in 2018 would result in up to $11.18 million of the decedent's assets being allocated to a credit shelter trust. Therefore, the application of the formula in 2018 might grossly overfund an intended gift. Furthermore, a simple survivorship plan (all to the other at the first death) could be as effective for estate tax purposes as the old AB Trust or ABC Trust. A review of your current plan is imperative in order to understand how your existing estate plan would operate if a death were to occur and to explore the alternatives now available.

Loreen- How can the senior generation provide leadership and guidance as part of their legacy?

Tim- A family charter can provide guidance for successor generations, including principles of family stewardship and charitable giving. Also, a letter of wishes can provide guidance on how to handle personal items, including guidance on the sale of homes, boats and planes if those items are not appropriate for use by the heirs, particularly if the costs of operation and maintenance outweigh the value of their use.

Loreen- How might a client deal with the possibility that one of the children might provide personal care by moving in with the client; resulting in friction amongst siblings following the client's passing?

Tim- Consider including a provision in the revocable trust that provides a stipend for such a caregiver. Otherwise, siblings may think the caregiver should not be rewarded for this service. In addition, consider whether this same child should be appointed under an advance health care directive. The rationale is that the child who is available is the one who can provide on-going care or supervision.

David Ohanian

To discuss further implications of wealth transfers to the next generation, we have **David Ohanian, City National Bank, Regional Manager Southern CA Private Banking**.

Loreen- What are families doing to address values and family traditions as it relates to their finances?

David- It is important for families to determine what they want their legacy to be. We aim to help families implement their values into their strategic wealth plan. Challenges are inevitable; however, a good plan will navigate and mitigate those challenges so that it withstands the test of time.

Loreen- How can families escape pitfalls when transferring assets from one generation to the next?

David- Families can prepare the next generation for the wealth and the responsibilities of the wealth that they are going to receive. They can do that by starting conversations early on with children and grandchildren.

Loreen- What role does philanthropy play in family legacy planning?

David- Charitable planning through Charitable Lead Trusts and Charitable Remainder Trusts help families set the stage to identify what is important and what they want their legacy to be for future generations. This allows the family to make a difference in the communities where they work, live and play.

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Our discussion wouldn't be complete without talking to some of the premier wealth managers in our community, such as **Mark Copeland, CFP®, AIF ®, Senior Partner, SEIA, LLC**.

Mark Copeland

Loreen- How long can the bull market of the last ten years continue?

Mark- We believe we have further to go in this recovery than most people expect. As of late, we have seen median household income hit a new high and the lowest quartile of earners have seen the strongest wage growth since the tax reform package. In addition, 70+ percent of our economy revolves around consumer spending and when the previously mentioned cohorts have more money in their pocket, they tend to spend it. We are seeing this in retail sales hitting new all-time highs. The smaller part of our economy, manufacturing, has also recently seen a pick up due to a cycle high of business investment. Finally, we might be at the end of a 30-year secular bond bull market, and that money will need to go somewhere.

Loreen- The US markets continue to be strong and the international markets have disappointed us recently. Given this scenario, should investors maintain or dump international exposures?

Mark- Each investor's situation is unique, however in general it is prudent to maintain international exposure, even with the recent underperformance, due to the valuation disconnect between these countries and the US. Based on historical measures, international, especially emerging markets, are at historic lows in relative valuation. In addition, the majority (almost 70 percent) of the millennial population resides outside the US, telling us that a consumer spending wave could be nearby propelling these markets higher. Finally, recent policy implementations and trade tensions should prove temporary and these countries should continue their upward trajectory once resolved.

Loreen- What year-end tax strategies are you suggesting for your clients?

Mark- Our year-end tax strategy depends on the client. The new tax reform plan has created incentives for some of our clients to invest heavily in their business, but has also hurt certain professionals that work in service-related professions. The 100 percent immediate deductibility of investment in capital goods and development has created an environment for some of our entrepreneurial clients to invest heavily and reap the rewards of that immediate deduction. For other clients, mostly retired or working in service related fields, we need to be wary of taking investment gains.

William Dolan

For an alternative perspective on wealth management strategies, we turn to **William Dolan, Senior Vice President and Senior Portfolio Manager with First Bank**.

Loreen- For people who either have a self-directed IRA or who are considering one, what warnings would you raise?

Bill- An investor should look at the promoter of the investment, researching track records and the degree of oversight. Investors also need to ensure there are regular audits as well as regular valuations. An investor should be mindful of how much net worth is put into these investments, as there are significant liquidity concerns with these types of investments. Many people overlook the need for liquidity features in having to meet required minimum distributions. Once you reach age 70 ½, you will need to have a liquidity feature in order to meet required distributions.

Loreen- Why do you think self-directed IRA's have been increasingly popular?

Bill- These investments tend to be popular when the markets and the economy is strong; however, problems surface when the economy weakens. Right now, we have been in a strong economy which helps to explain why these types of investments have been on the rise.

Loreen- Why would an investor consider adding alternatives into a portfolio?

Bill- To reduce the risk of the equity portion of a portfolio, we have traditionally used fixed income. However, now that we are in a low and rising interest rate environment, investors will be well-served by including other investments with an expected return that is better than the expected return in fixed income. These types of investments should have different risks than equities.

Loreen- When investors are concerned about maintaining their regular distributions out of a portfolio, what should they consider?

Bill- Clients should consider stability as well as growth of value in their investment portfolio. Many investors do not understand the negative impact that volatility can have on compounding returns. Reducing volatility is critical and is accomplished through building a portfolio that can achieve the growth needed to meet objectives, but without creating unnecessary risk associated with concentrated positions.

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Many business owners and corporations dedicate the fourth quarter to reviewing and changing company benefits. We turn to **Jack Cross of CrossPlans** to give us guidance on maximizing retirement plan benefits for both employers and employees.

Jack Cross

Loreen- What opportunities are there for business owners with the new tax law as it relates to retirement plans?

Jack- The Tax Cuts and Jobs Act (TCJA) had relatively small impact on the design of retirement plans. But because of the changes to the tax structure as it relates to lower corporate rates and new tax deductions for owners of pass-through businesses, we think that the law will encourage the use of defined benefit plans by pass-through entities. The Qualified Business Income (QBI) deduction rules or §199A deductions permit the owner of a partnership, sole proprietor, trust or S Corporation to potentially deduct from his or her taxable income the lesser of 20 percent of the business QBI or the greater of 50 percent of W-2 wages the business paid. But if the owner exceeds certain compensation limits, that 20 percent is eliminated.

We think that business owners who otherwise might be taking distributions in excess of the new limit for the 20 percent will be looking for other ways to use that money that still represents both a tax deduction and wealth accumulation tool for themselves and their employees and allows them to personally utilize the tax-favored corridor.

Loreen- Are there any changes on the horizon relating to retirement plans?

Jack- There are a couple of changes on the horizon that could impact the retirement plan world, although we don't fully have the details of either yet. One is CalSavers, the mandatory retirement plan coverage passed by the California Legislature and signed into law (Senate Bill 1234) by the Governor and the other is support gathering behind Open Multiple Employer Plans, MEPS for short. The CalSavers program expects to be open for statement enrollment in early 2019.

Multiple Employer Plans, MEPs have actually been around for years, and are plans utilized by two or more unrelated employers. Through time they have been used by trade associations and professional employee organizations, but open MEPS would allow for greater flexibility in the market place. There has been a groundswell of support to remove those constraints. This support is endorsed not only by several Washington lawmakers on both sides of the political aisle but also by the U.S. Chamber of Commerce, AARP, many affinity groups, the financial services industry and in fact the President has lately been speaking in support of the changes. Therefore, I think we will be seeing movement to "open" MEPs to more employers.

Loreen- What impact will SB1234 have on retirement plans?

Jack- SB 1234 authorized implementation of California Secure Choice Retirement Savings Program, an automatic payroll deduction retirement savings program for private sector employees in California who lack access to a workplace retirement plan. Participation is mandatory for eligible employers, those with 5 or more employees that do not sponsor their own retirement plan. Eligible employees will be enrolled unless they opt out. Employees will contribute via automatic payroll deduction. Employers who are required to participate will be fined if they do not, although the mechanics of this system has yet to be outlined. Anyone who has dealt with State sponsored agencies probably has an opinion on how this will work. Perhaps it will promote the adoption of retirement plans by businesses with 5 or more employees in order to be exempt from the law.

Stuart Winston

When it comes to building wealth, gems and jewelry have a special place. Families of great means oftentimes have a significant amount of wealth in precious and semi-precious gems. **Stuart Winston of Lugano Diamonds** understands how jewels can maintain and pass down the family fortune.

Loreen- Many families receive heirloom jewels through an inheritance, but don't know how to distribute them to family members. What suggestions do you have for families inheriting jewels?

Stuart: We help some of the most influential families around the world distribute family jewels by renewing, redesigning and repurposing heirloom pieces into useable and functional jewelry.

Loreen: For someone looking for a one-of-a-kind precious stone, what would you suggest?

Stuart: A blue diamond is one of the rarest diamonds in the world. The infamous Hope Diamond is a blue diamond. We currently have a 4.5 carat blue diamond available for sale at $3.4 million. Compare that diamond with a white diamond of similar size, color and clarity for $160,000.

Loreen: What makes working with Lugano unique and why should families consider talking to you about their family jewels?

Stuart: We carry our own jewelry versus carrying lines of different brands. We also design mostly one-of-a-kind pieces which makes us experts at creating new and innovative ideas on a daily basis. Our workshop is familiar with custom work that is classic as well as timeless; therefore, our jewelry is intended to pass from generation to generation.

Lugano's company philosophy is to be a good community leader and they value what their clients' value.

All of our contributors play an important role in the Orange County business community. Whether you need to discuss estate planning, taxes, asset management, retirement plans or precious gems, our experts are available to assist you with the wealth strategies to will help you end the 2018 year well.

Loreen


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Why Wait? How and Why to Transfer Wealth in Your Lifetime

By Paul DeLauro, City National Bank

Wealthy individuals typically plan to take the traditional route of passing along their fortunes upon death, but many opt to give at least part of their money gradually during their lifetimes.

There are a number of benefits to transferring wealth this way — perhaps the most important being the opportunity to educate and prepare children to inherit and manage a substantial estate.

An RBC Wealth Management survey of high-net-worth individuals in the United States, Canada and the UK found that despite their best intentions, many families repeat a “cycle of inadequate financial guidance” that results in a lack of preparedness.

Wealthy families are “delivering too little too late,” starting the next generation’s formal financial education, on average, at age 28, the survey found.

Only 26 percent of those surveyed had developed a full strategy for transferring their wealth, and only 35 percent of inheritors reported that their benefactors had prepared them in advance. Further, 36 percent said they received no help after inheriting their riches.

People are uncomfortable discussing inheritance, the RBC survey acknowledged, but how people pass on their wealth to the next generation impacts whether a family legacy will last for a single generation or well beyond.

This is where gradual giving can make a vital difference.

“Gifting is the only way to prepare your heirs to inherit the larger wealth that is coming their way,” said Paul DeLauro, manager of wealth planning at City National Bank.

Whether a family has millions to pass to the next generation, or little more than the proceeds of a $1 million house, heirs can quickly lose their new nest egg if they don’t know how to handle it properly.

Roughly 20 percent of people who inherit money remain wealthy at their own retirement, according to DeLauro. “That means 80 percent of them have blown their inheritance no matter what size.”

So how do you make sure that grim statistic does not apply to your own family? Making gifts to a young-adult child through an irrevocable trust - using your cash flow, “excess” estate holdings or both - along with the services of a professional trustee, can provide the necessary training.

“You have a duty of stewardship to prepare your children, not only to inherit wealth but to manage money,” DeLauro said.

Families often share financial guidance informally, but unlike most parents and grandparents, professional trustees know how to manage an estate and educate heirs on finances.

Making gifts in life by seeding a trust can enable children to “learn what it means to be the beneficiary of a small estate before you pass a large estate to them,” DeLauro said.

Yet less than a third of wealthy families make this choice. Fifty-seven percent of wealthy individuals surveyed by RBC plan to pass along all their wealth upon death or illness, while only 29 percent plan to gift gradually during their lifetimes.

“People think about it, but pulling that trigger is really tough,” said Catherine Walker, senior trust consultant at RBC Wealth Management-U.S. “If they do, it’s often for a specific reason, such as establishing a 529 plan for a grandchild’s education, or making a $30,000 gift for a house down payment.”

The main reason for the hesitation for a quarter of survey respondents felt their funds were not sufficient enough to justify shrinking their nest egg now. Although parents want to leave a legacy, they also want a sense of security and the ability to maintain their lifestyle. Before establishing a plan for lifetime giving, your banker will work with you to ensure your retirement goals and objectives can bet met.

Why make gradual gifts, assuming you can afford to do so?

“I honestly believe you get more personal benefit from giving during your lifetime, if you can do it,” said Walker. “When you approach transferring your wealth in this way, you can *see* the benefit and the happiness it brings.”

Giving during your lifetime allows you to share your financial values and know-how with heirs and help shape their relationship with money. This can play a significant role in teaching them how to manage the wealth responsibly and how to best make saving, investing, and spending decisions.

Children often graduate college and head to their first real job having never balanced a checkbook, DeLauro said.

“I would suggest right around that age is when you’d want to make a significant gift in trust, whatever you can afford,” he said. It may be $100,000 or $200,000, “some amount where you can say, ‘Kid, don’t call me if you need money anymore.’” Instead, the child will need to work with the professional trustee.

If you seed a trust in your lifetime, “that becomes the piggy bank allowance for that kid for the rest of their lives,” DeLauro said.

Parents can set up the rules of the trust however they prefer, but DeLauro strongly recommends that parents appoint appropriate bank professionals rather than setting themselves up as trustees.

The trust, at its core, is a contract between the trustee and someone transferring assets, he noted. It can be restrictive, limiting fund distribution to health, education, maintenance and support needs, or liberal to the point where the trustee is instructed to provide money for whatever the child requests.

The young-adult beneficiaries receive access to a private banking experience — a team of professionals who will meet with them, provide reports, answer their budgeting questions and handle discretionary distribution requests.

In addition to providing trust administration, tax and investment services, the team can dispense the kind of financial education on cash flow planning, budgeting and portfolio construction that even high-net-worth parents are generally unequipped to give.

That means when the parents eventually die, their grieving offspring won’t be left unprepared and uncertain about what to do with a large inheritance, DeLauro said.

Benefactors can seed up the trust and, if they desire, make additional gifts every year, with private bankers helping them determine how much they can afford to give.

Individuals can gift up to $15,000 each a year to any recipient tax-free, so a wealthy married couple could give $30,000 a year to their adult daughter. If she has a family of four, the parents could deposit $120,000 combined annually in trust gifts to each family member.

“Having that account set up is that training-wheels concept, where the daughter can really learn what a trust is and how it functions,” DeLauro said.

With the proper plan in place, transferring your wealth throughout your lifetime will help you to share your financial management skills and values with the next generation. Doing so helps ensure the family legacy you’ve built is maintained and enjoyed by multiple generations.

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Paul received his undergraduate degree from the University of Colorado, Boulder and his law degree from the University of Denver, College of Law. In addition, Paul studied international affairs and economics at the University of London, Birbeck College and income tax law at the University of Denver Graduate Tax Program.

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Pitfalls for Family Trustees

By Timothy J. Kay and Deborah Mallgrave

Modern estate plans are built around the establishment of trusts and avoidance of probate. Many families find that one unintended consequence of avoiding probate is more litigation over increasingly complex estate plans that must be administered for many years after death.

Sibling rivalries have been known to erupt when parents are no longer around to mediate and soften the blows. Following the death of parents, family members sometimes relitigate childhood grievances and adopt irrational positions on matters of money. Discontent can intensify when one favored family member is appointed successor trustee of the family trust and conflict is built into second marriages and blended family situations. Hard won experience offers estate planning strategies to help manage your family dynamics long after you're gone.

Compensation for Care

Consider alternative plans for your care and identify them in your estate plan. For example, if a family member helps with your care, minimize future fighting by spelling out the compensation for that help. If shared living arrangements are anticipated, consider how living expenses should be paid. Keep in mind those family members not providing care may suspect the caretaker is taking advantage of you.

"Knowing your family and anticipating rivalries in your estate plan can help minimize family fights after you're gone..."

Give Family Members Something to Lose

Cutting the adversarial family member out of the trust does not always prevent fights. It can actually create them. A disinherited family member has nothing to lose by challenging the trust or will. Consider giving all family members, especially those likely to create problems, a piece of the pie and they may decide the fight is not worth the risk of losing the portion they have been given.

Amend Your Trust From Time to Time

Multiple trust amendments can make it harder for beneficiaries to challenge your trust after your passing. To void provisions in the initial trust, the challenging beneficiary must work in reverse chronological order to demonstrate each amendment is void before attacking the original trust.

Require Trustee to Keep All Beneficiaries Informed

Disputes often arise from lack of transparency with the trust beneficiaries. Under California law, a trustee is only required to provide an accounting to current beneficiaries once a year. Contingent beneficiaries are entitled to no information until they start receiving distributions (although they may be able to complain about a trustee's actions before then). Providing monthly or quarterly accountings or account statements to all beneficiaries keeps everyone informed, may reduce suspicions and can shorten the period for raising any complaints from three years to 180 days.

Specify Trustee Fees

Disputes can arise over fees paid to a family trustee for managing what are perceived as the family's assets. Consider your family's assets and dynamics at the outset to set a fee that will be viewed as fair and unlikely to cause jealousy or disputes.

Appoint a Corporate Trustee

If the trust assets require significant management or if your family is especially contentious, then consider designating a corporate trustee as a co-trustee, or giving your family trustee the ability to designate one. A corporate trustee can provide a layer of protection for the family trustee and neutrally navigate family feuds. Corporate trustees will charge for their services, but their involvement may help avoid far more costly litigation.

Conclusion

Knowing your family and anticipating rivalries in your estate plan can help minimize family fights after you're gone so those who are left can enjoy your gifts and you can rest in peace. Share your concerns with your estate planner, who may be better able to plan your estate with that important information.

About Snell & Wilmer's Private Client Services Practice

At Snell & Wilmer, we strive to help high net worth individuals, executors, trustees and beneficiaries accomplish specific objectives and achieve overall sound wealth management and protection. Our attorneys have experience with estate planning and litigation, charitable planning, establishing private family foundations and public charities, business succession planning and international estate planning. We rely on our firsthand experience with estate and gift tax laws, our commitment to confidentiality and our reputation for providing high-quality representation to offer our clients comprehensive wealth management services that are tailored to their individual needs. For more information about Private Client Services visit www.swlaw.com/services/private-client-services.

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What are the Risks of Self-Directed Individual Retirement Accounts (IRAs)?

Investors are faced with many important decisions as we navigate a competitive and often confusing economic and business landscape. How we choose to allocate our resources (wealth) is the most important decision investors must make and largely the determinant of our success.

Self-directed IRAs (Individual Retirement Accounts) offer investors the opportunity to allocate wealth to investments that are not available in IRAs where there is a regulated institutional trustee or custodian, and this can be appealing to certain investors.

Risk and reward are imbedded in investments, inherent to investing, and need to be assessed and understood in order to make sound investment choices. To be sure, the wide array of non-traditional investment options available in a self-directed IRA can be attractive to some investors.

> ***"However, the very nature of 'self-directed' leaves investors vulnerable without the added layer of due diligence and vetting of investment options."***

However, the very nature of "self-directed" leaves investors vulnerable without the added layer of due diligence and vetting of investment options. This oversight only comes with an IRA held with an institutional trustee or custodian that is screening the investment options allowed on its platform. Any lack of professional screening and due diligence of investments coupled with the long term nature and penalties for early withdrawal of an IRA have served to foster an environment where fraudulent investment schemes can take root easier and go undetected longer. This condition has even prompted a U.S. Securities and Exchange Commission (SEC) warning to investors – published in September of 2011. Check out www.sec.gov/investor/alerts/sdira.pdf to see what can go wrong.

The key questions investors need to ask when considering a self-directed IRA are:

- Do I have confidence that the reward and risk of particular non-traditional investments is better than traditional investments?
- Do I have the time and skill to accurately analyze and monitor the risk and return of these investments?
- Do I have the time, skill, and access to determine the integrity, track record, and qualifications of the managers and promoters offering these non-traditional investments?
- Are the investments at arm's length and allowable within IRS guidelines or do they run the risk of disqualification and losing their tax-deferred status?

BILL DOLAN
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If the answer is "no" or "I'm not sure" to any of these questions, then you are well advised to stick with an IRA held with a fiduciary trustee or custodian. Seek one offering only regulated securities like stocks, bonds, mutual funds, and exchange-traded funds (etfs) in addition to a growing platform of liquid alternative funds, real estate funds, and private equity funds that have been screened, vetted, and are continuously monitored.

As always, your First Bank trusted advisors are ready to answer any questions regarding IRAs, self-directed IRAs, or any other retirement plan options. Let's discuss.

For more information about First Bank Wealth Management, please call Bill Dolan, Senior Portfolio Manager, California Wealth Management at (949) 475-6304 or visit FirstBankWealth.com.

William "Bill" Dolan is a Senior Vice President, Senior Portfolio Manager, and a Team Leader for the Wealth Management Division at First Bank. Possessing more than 20 years of experience in multiple disciplines, including investment management, wealth management, and real estate investments, Bill is responsible for the overall development and coordination of wealth management activities in California for First Bank.

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FERRUZZO

Recent Court Decisions Will Make it More Difficult for California Businesses to Classify Workers as Independent Contractors

For many years, companies have sought to avoid the cost of overtime pay, workers' compensation, and other economic and administrative burdens by classifying workers as independent contractors. However, the question is will the courts agree that your company's workers are correctly classified as independent contractors? The rules concerning the proper classification of workers have not been clear and the risk of getting it wrong is great. In recent years, the State of California has declared the misclassification of workers as independent contractors to be a serious problem.

From the perspective of business owners, workers who are classified as independent contractors do not require the business to pay payroll taxes, minimum wage or overtime, or comply with various wage and hour law requirements such as providing meal breaks and rest periods, or reimbursing workers for business expenses such as tools and travel expenses. Additionally, the company does not bear the burden of paying additional workers' compensation insurance, unemployment insurance, disability insurance, or social security.

The government has its own countervailing interests when it comes to how workers are classified. For instance, the Employment Development Department is concerned with the payment of employment-related taxes. The Division of Labor Standards Enforcement is concerned with the enforcement of state wage and hour laws. The Division of Workers' Compensation also has a stake in how workers are classified. These various agencies are tasked with enforcing their respective rules and regulations and have the ability to impose monetary penalties for violations. From this governmental point of view, the misclassification of workers as independent contractors deprives the state of millions in tax revenue.

Under the laws in California, there is a rebuttable presumption that a worker performing services is an employee and all of the attendant rules, regulations, and taxes that come with classification as an employee are presumed to fall upon the employer. The potential liability and monetary penalties that may be imposed upon a business in the event that any of its workers are found to be improperly classified as independent contractors are significant. Employers can be held liable for extensive damages and penalties for unpaid wages reaching back years.

Lawyers representing workers, as well as the various governmental agencies mentioned above, are actively looking for and litigating cases concerning the misclassification of workers.

Most people believe (incorrectly) that the determination of whether a worker is an employee or an independent contractor is dependent on how the worker is treated for federal income tax purposes. Unfortunately, this is not the test that the courts use to determine if a worker is properly classified. Likewise, the fact that the parties have a written independent contractor agreement is not a determinative.

In the past, courts have considered a number of factors set out by the California Supreme Court in 1989 in the case of S.G. Borello & Sons, Inc. v. Dept. of Industrial Relations (1989) 48 Cal 3d. 341. Under this test, referred to as the "Borello Test," the court considers numerous factors. The single most significant factor has been whether the company retains control over the worker and "the manner and means" by which the worker performs the work.

Over the past several years, California courts have shown a clear trend towards finding that workers are classified as employees rather than independent contractors.

This year has seen two more significant court decisions that have addressed the issue of worker misclassification. Earlier this year, in the case Dynamex Operations West, Inc. v. Superior Court of Los Angeles (decided April 30, 2018), the Supreme Court for the State of California announced a new test for determining the proper classification of workers. This new test is known as the "ABC Test."

"The ABC Test presumptively considers all workers to be employees, and permits workers to be classified as independent contractors only if the hiring business demonstrates that the worker in question satisfies each of three conditions: (a) that the worker is free from the control and direction of the hirer in connection with the performance of the work, both under the contract for the performance of the work and in fact; and (b) that the worker performs work that is outside the usual course of the hiring entity's business; and (c) that the worker is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed."

This new test adds an additional component to the equation, part "b." This recent decision by the California Supreme Court will now make it more difficult for businesses to classify workers as independent contractors.

One industry in particular that has litigated this issue is the trucking industry. Interstate motor carriers, which are governed by Federal Trucking Regulations, have often asserted in court that Federal Regulations preempt state law in this area and, therefore, should not be applied. Recently, the United States Court of Appeals for the Ninth Circuit ruled that Federal Trucking Regulations did not preempt the California Labor Commission from using the Borello standard to determine whether a federally-regulated motor carrier has properly classified its drivers as independent contractors (See California Trucking Association v. Julie Su, No. 17-55133, 2018 WL 4288953 (9th Cir. Sept. 10, 2018). This recent Federal Court decision, which was briefed and argued in Federal Court before the California State Supreme Court announced its decision in the Dynamex case, exemplifies the policy of the State of California to classify workers in California as employees.

For the businesses who find themselves in court litigating these sorts of employee misclassification cases, the legal tide is turning against finding that workers are independent contractors. If your business regularly engages the services of independent contractors as part of its labor force, then it is advisable to seek the counsel of experienced lawyers who understand this complex and changing area of the law.

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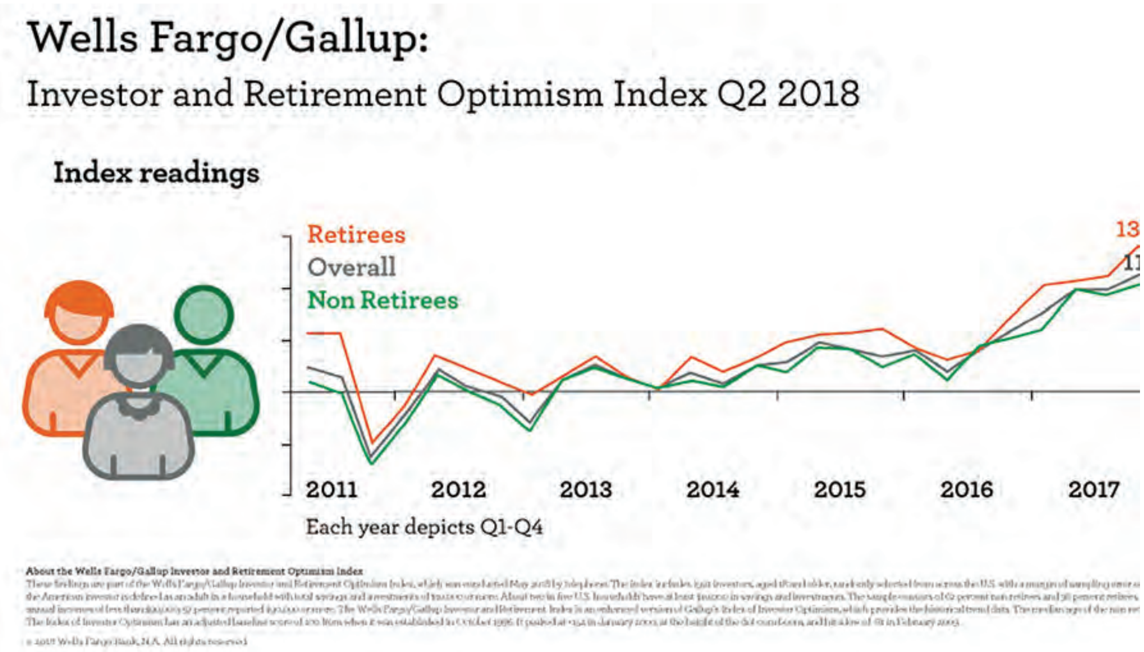
Wells Fargo/Gallup: Investor Optimism Remains Strong

U.S. investors remain broadly positive about the U.S. investment climate, according to the Wells Fargo/Gallup Investor and Retirement Optimism Index. The index score is at 103, with investors' 12-month outlook for economic growth, U.S. unemployment and their personal finances remaining strong. Although the index is a bit lower than the 117 recorded last year, this is the sixth straight quarter it has registered 100 or higher. This follows a 16-year period when investor optimism was consistently below that level.

Top three risks to the stock markets

While overall investor optimism is strong and 41 percent of investors say the market will go up in value in 2018, investors worry certain economic and political matters could disrupt the market. Eight in 10 investors (79 percent) say they are "somewhat" or "very" worried about possible data breaches from cyberattacks on business or government affecting the market. A similar percentage worry about the political climate in Washington (78 percent) and the federal budget deficit (77 percent). Further, close to half (48 percent), are "very" worried about the possible impact of the political climate, the highest level of extreme worry for any of the items tested.



Investors in wait, watch and see mode

Most U.S. investors expect stock market volatility to continue throughout 2018 (81 percent) rather than settle down before year's end (19 percent). Further, 65 percent say the "worst is ahead of us" in terms of volatility, with 35 percent saying the "worst is behind us." At least six in 10 agree that volatility has caused them to pay closer attention to their investments (62 percent) as well as to the market as a whole (59 percent).

Close to half of investors (46 percent) "somewhat" or "strongly agree" that market volatility is causing them to leave some of their money in cash now, rather than invest it. However, fewer are changing their existing investments as a result. Seventeen percent say they sold stocks to protect from further losses, while somewhat more (25 percent), say they purchased stocks to benefit from lower prices. One in five investors (20 percent) were rattled enough to shift some investments into lower-risk instruments such as bonds or a stable value fund. The most common actions investors report taking are consulting with a financial advisor (42 percent) and rebalancing their portfolio (35 percent).

Retired investors were more likely than non-retired investors to report taking most of the actions tested and are particularly likely to consult with an advisor (59 percent of retirees versus 32 percent of non-retirees), to have rebalanced their portfolio (45 percent versus 30 percent), and to have sold stocks to prevent further losses (23 percent versus 13 percent).

Investors are twice as likely to believe the stock market will go up in value over the next year (41 percent) than believe it will go down in value (22 percent), with 37 percent saying it will stay the same. Those who say markets will gain expect growth to be solid, predicting a median rate of return over the next year of 8 percent. Those who say the market will go down in value have a more extreme expectation, predicting an average market loss of 12 percent.

Most investors handling volatility well

The poll also offers several signs that investors are keeping this year's volatility in perspective:

▶ Three in four investors (74 percent) say the market volatility seen this year is normal and was to be expected; 26 percent consider it a sign the market is in trouble.

▶ Nearly one in five (19 percent), say that this year's volatility "caught them off guard."

▶ The majority, 74 percent, disagree that volatility has made their life stressful; 26 percent say it has.

▶ The majority of investors, 78 percent, say they are "very" or "somewhat" confident about investing in the stock market as a way to build wealth for retirement. The remaining 22 percent are "very" or "somewhat" doubtful.

▶ Looking further into the future, investors predict that the median rate of return over the next 20 years will be 10 percent, similar to the long-term average for the S&P 500 when not accounting for inflation.

Female investors (62 percent) are more likely than male investors (48 percent) to be "somewhat" or "very concerned" about recent volatility in the stock market. Perhaps because of this, women (73 percent) are less likely than men (83 percent) to say they are confident in the stock market as a good way to build retirement wealth.

More than a quarter of investors (27 percent) agree that this year's volatility has resulted in a significant decline in their investments. By contrast, just 18 percent say volatility has caused them to cut back on their day-to-day spending.

Investors reasonably expect increased market turbulence going forward. Nevertheless, in their own minds they are ready for it and have every intention to ride it out, recognizing the wisdom of a long-term approach to investing.

About the Wells Fargo/Gallup Investor and Retirement Optimism Index
The results of this Wells Fargo/Gallup Investor and Retirement Optimism Index are based on a Gallup Panel web study completed by 1,921 U.S. investors, aged 18 and older, from May 7 to 14, 2018.

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CrossPlans

CrossPlans Strives to Help You Meet Your Retirement Goals

At CrossPlans, we are committed to our client's goals and aspirations. In order to achieve their success, we approach each situation as unique and personal. We do not sell investment or insurance products, only our technical expertise, which allows us to be completely unbiased in our work with our clients and their investment professionals.

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Retirement Plan Industry Trends: What Employers Need to Know

There are many interesting and important trends we are seeing in the retirement plan industry. Employers sponsoring a retirement plan (plan sponsors) will want to consider which of these trends should be incorporated into their retirement plans and evaluate how well their current investment advisor as well as their plan vendor (recordkeeper) are keeping up with changes in the industry.

New Tax Law
The Tax Cuts and Jobs Act became effective at the beginning of 2018 and it is the largest overhaul of the U.S. tax system in over thirty years. Most people do not yet realize what the tax law means for them, but once taxes are filed for 2018, we expect retirement plan contributions to shift in a few ways. First, those who lose itemizing their deductions because the standard deduction has doubled, will look to pretax retirement savings to reduce their taxable income. Also, taxpayers who see their taxes going down, will consider the benefits of a Roth 401(k) contribution.

Financial Wellness
While health wellness has been the focus of many human resource departments, there is an increasing interest in financial wellness programs for employees. Whether it is dealing with student loans for Millennials or retirement readiness for baby boomers, financial matters are at the forefront of workers' minds. Employers addressing those financial pressures can help their employees reduce financial stress and hopefully be more focused on their job. Seek out an advisor experienced in running financial wellness programs to help tailor a program that works for your employee demographics.

Open Architecture Platforms
Most, but not all, recordkeepers have moved away from requiring a plan sponsor to only use their funds in the retirement plan. However, those proprietary platforms do still exist. In addition, many recordkeepers limit the number of funds from which to choose, which then limits the retirement plan fund choices. Plan sponsors should look to see what open architecture platforms are available for their plan. Open architecture plans offer thousands of investment options and are not bound by fund requirements and limitations. Having too many funds offered on the lineup can create paralysis for participants, but at the plan level, employers should be able to choose from a broad array of investment options.

Model Portfolios
Most plan sponsors understand the benefits of having target date funds in the retirement plan, including potentially using the target date funds as the qualified default investment alternative (QDIA). In addition, many plans also include risk-based portfolios from which employees can allocate based on their risk profile. The next iteration of allocation strategies is to offer model portfolios, whereby the funds are put together from the fund lineup in the plan. These portfolios are often actively managed portfolios where the investment advisor adjusts the asset allocation.

ESG Investment Options
ESG is an acronym for screening companies based on Environmental, Sustainable and Governance policies. It is a broader screening than the old socially responsible investing, which used a negative screen for the so called 'sin' stocks of alcohol, tobacco and firearms. In a study conducted by Natixis Investment Managers in 2016, three out of four defined contribution participants surveyed said that they would like to have more socially responsible fund options included in their retirement plan. In addition, seven out of ten surveyed said that they would be more likely to increase contributions to their retirement plan if they knew their investments were doing good in the world.

Retirement Income Strategies
As the demographics show that more and more people are reaching retirement age, plan sponsors are looking at deaccumulation strategies. Withdrawal strategies pose different risks than accumulation strategies, namely the sequence of return risk. Think of it as dollar cost averaging in reverse. Dollar cost averaging helps you as you are accumulating money because when the market is down, you are buying more shares and when the market goes back up, you will capture a gain. However, in retirement, if you need to sell shares as they are going down, you are selling more shares and will not recapture the value when the market goes up. In-plan retirement income strategies can assist employees with an income stream and at the same time, prevent excessive money from leaving the plan in the form of rollovers. We expect more products to hit the market that would provide an income stream to participants directly from their employer-sponsored plan.

Potential Market Correction and Eventual Economic Recession
We are now a decade into the bull market run and while bull markets do not die of old age, they do eventually die with some impetus leading the economy into the next recession. We don't know when that will happen, but we do know that we are closer to the end of the bull market than at the beginning. Therefore, plan sponsors should reevaluate fund offerings now, taking an analytical look at downside capture instead of solely focusing on the best past performance numbers. Specifically, this is a good time to review which target date funds are being offered, comparing risk profiles of various target date fund options.

Fiduciary Rule
Implementation of the fiduciary rule has been pushed down the road; however, most everyone in the industry is better prepared for an eventual change. The most important note for plan sponsors is to make sure your retirement plan advisor is acting in a consultative manner as a co-fiduciary, such as in a 3(21) or 3(38) capacity. Seek out an advisor with the designation of Accredited Investment Fiduciary (AIF) which ensures your consultant is trained in acting as a fiduciary.

In summary, many plan sponsors haven't thought through all of these topics. As an investment advisor to retirement plans, we present these topics and much more to plan sponsors, providing solutions tailored to each company's plan objectives. Contact us to conduct an analysis of your current retirement plan so that your plan becomes a successful tool for employee recruitment, retention and morale.

Loreen Gilbert
Loreen Gilbert is a registered representative with and securities offered through LPL Financial, Member FINRA/SIPC

Loreen Gilbert is the President and Founder of WealthWise Financial Services. Gilbert serves as Chair of National Association of Women Business Owners Institute (NAWBO Institute), which provides resources and tools to women business owners around the globe. Gilbert was awarded the Remarkable Woman Award as "2016 Business Owner of the Year" and "2017 Advocate of the Year" for NAWBO-Orange County, California. She was recently honored by *Enterprising Women Magazine* as the national winner of the 2017 Enterprising Women of the Year award in her category. Gilbert has been covered by US News & World Report, Investor's Business Daily, Yahoo! Finance, Money Magazine, Reuters, USA Today and Financial Advisor Magazine. Gilbert also hosts on-air segments for KX 93.5 FM where she resides in Laguna Beach, California, to educate listeners on financial matters. Her iTunes podcast is called WealthWise Moment. Contact us at (949) 748-1177 or wealthwisefinancial.com.

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