



Planning for privacy in a public world.

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We live in a public world, where anyone with a computer, smartphone, or tablet can easily access an unsettling amount of our clients' personal information. Clients have become increasingly concerned with protecting their privacy and personal security, and often look to professional advisors for practical solutions. Below are several privacy planning strategies the professional advisor can recommend.

Utilizing a "pour-over" will and revocable trust

A common technique to secure a client's privacy is to suggest that the client's core estate plan includes a "pour over" Will and revocable trust, instead of a "standalone" Will. A standalone Will generally becomes a matter of public record upon death. Since the standalone Will contains all of the substantive provisions regarding the disposition of a client's probate assets, potentially sensitive information may be exposed. By contrast, a pour over Will simply directs that a client's probate assets be distributed to the client's revocable trust that is governed by a document not filed as a matter of public record.

Titling real estate, other assets

Many clients seek privacy with respect to ownership of particular assets, including real estate, firearms, artwork, or other collectibles. As public access to real estate records and other information increases, titling these assets in a

client's name may pose particular risks to a client's privacy and, in some cases, personal security.

There are two primary methods to secure privacy with respect to a client's ownership of these assets:

- Titling the property in the name of a revocable trust; or
- Titling the property in the name of a business entity, such as a limited liability company (LLC).

Both techniques provide privacy during lifetime and upon death while also avoiding probate. To maximize privacy, the revocable trust or LLC should be managed by a third-party manager or trustee who is not easily linked to the client. If an LLC is utilized, it should be established in a jurisdiction with limited disclosure obligations. The most appropriate ownership structure will depend on the client's objectives, and the jurisdiction in which the property is located.

Charitable gifts

Many clients desire to make charitable gifts anonymously to minimize future solicitations, uphold religious or philosophical ideals, place the focus on the charity, or protect personal security. Following are several ways to shield the client's identity from the general public and in some cases, from the charity itself.

Client gives directly to charity. Generally, a public charity is not required to publicly disclose a donor's gift. While charities are required to file an annual tax return (Form 990), the IRS is required to redact substantial contributors' information, including name and address, before the Form 990 becomes public. A client seeking additional assurance that a charitable gift will not be disclosed to the public and that only a limited number of the charity's personnel will have access to the donor's information should consider entering into a written agreement with the charity prohibiting disclosure.

Client gives through an agent. Clients who wish to make a charitable gift that will be anonymous both as to the public and the charity should consider appointing an agent to make the gift. The agent would work with the charity to transfer the property and obtain the charity's written acknowledgement of the gift, which the client may use in claiming a charitable income tax deduction.

Client gives through a revocable trust or an LLC. A client may use a revocable living trust (RLT) or LLC to make charitable gifts while protecting the client's identity from both the public and the charity. The name of the RLT or LLC should not be easily associated with the client, a third party should serve as trustee or manager, and the revocable trust or LLC should obtain a separate taxpayer identification number.

Client gives to a designated fund at a community foundation. A client may make an anonymous gift to a charity by transferring

property to a designated fund at a community foundation. The fund agreement will specify the name of the charity and the obligation to transfer funds to such charity.



Client gives to a donor advised fund. If a client would like to give to multiple charities anonymously, the client should consider creating and funding a donor advised fund (DAF). Many public charities sponsor DAFs, which allow donors to make charitable contributions, receive an immediate income tax deduction, and retain the right to recommend grants from the DAF over time. When the DAF makes a distribution to a charity, the client may control the info that is provided to the charity, including withholding the name of the client and the DAF.

Client's private foundation gives to a designated fund or DAF. A private foundation's annual tax return (Form 990-PF) must report financial information, including charitable grants and the names, addresses, and contribution amounts of donors who give \$5,000 or more during the taxable year. Form 990-PF must be available for public inspection. Clients who seek privacy with respect to grants made from a private foundation should consider utilizing a designated fund at a community foundation or DAF to distribute the funds to the ultimate charity. This strategy should make the charitable gift anonymous as to both the public and the ultimate charity.

Political contributions

Clients may desire to keep their political contributions confidential to minimize scrutiny

from employers, business contacts or the general public, or to prevent a political candidate from being associated with an unpopular or controversial client. However, a client's contributions to a candidate, campaign, or political action committee can be identified by visiting the Federal Election Commission's website. Clients seeking to privatize their political contributions should consider contributing to a social welfare organization created under Code §501(c)(4). Although a 501(c)(4) organization is required to identify its contributors on its annual Form 990, the names and addresses of its contributors can be redacted. A client seeking additional assurance of privacy should consider contributing funds to an LLC, which in turn contributes the funds to the 501(c)(4) organization.

Third party confidentiality

While a client's efforts to maintain privacy can be effective, it may be more difficult to prevent the disclosure of confidential information by friends, family members, employees, caretakers, and romantic partners. These individuals often possess sensitive information regarding a client's finances, health, activities, and relationships. An effective strategy to limit disclosure of confidential information is the proactive use of non-disclosure agreements or confidentiality clauses in third party contracts. Non-disclosure agreements can be designed to secure privacy with respect to a client's personal and professional relationships, as well as mandate litigation alternatives, such as mediation and arbitration, that may avoid the public court system.

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Conclusion

As technology continues to develop, exposing more of our client's information to public scrutiny, the importance and demand for privacy planning will increase. While absolute privacy may be impossible to achieve, professional advisors have an opportunity to assist clients in proactively structuring their estate plans, charitable gifts, and financial transactions to secure increased privacy by limiting public disclosure of sensitive information. The strategies discussed in this article provide professional advisors with additional opportunities to demonstrate the value-added benefit of their services.

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