

**Estate Planning Trust Council of Long Beach
Roundtable Discussion – June 2010**

Hypothetical Case Study

Panel Members: Paul D. Velasco (Moderator); Gregory Burnight (Trust & Estate Attorney); Jon Alban (Estate Planning Attorney); Kevin McGuan (Investment Advisor); Michael Munn (CPA); Karin Finnegan (Trust Officer); Wendy Hatch (Professional Fiduciary); Mabelle Thompson (Geriatric Care Mgr.); Julie Heggeness (Dir. of Planned Giving)

Hypothetical Background Facts:

Clients: Mr. and Mrs. Mike and Carol Brady have been married for 20 years. This is a second marriage for each of them. They have no children of their marriage, but each of them have three adult children from a prior marriage. Mike is 70 years old and Carol is 62. Carol is a retired schoolteacher. She retired two years ago. There is no premarital agreement.

Mike's Children: Greg, Peter and Bobby*. (Mike also 3 grandchildren.)

*It is important to note that Bobby is a recovering alcoholic and drug addict. He has been clean and sober for 14 months.

Carol's Children: Marcia, Jan** and Cindy. (Carol also has 2 grandchildren.)

**Jan is in the middle of a messy divorce from her husband of 8 years and she is currently unemployed and living with Mike and Carol. Jan has one child (8 years old).

Family Business: Mike owns a successful surfboard manufacturing business that he started approximately five years prior to his marriage to Carol, which has been operating as a sole proprietorship. Although Mike is still involved in the business, his recent health setbacks (which are discussed in more detail below) have forced him to cut back his work hours substantially. Two of the children, Greg and Marcia, have been working in the business for ten years and have been managing the day-to-day affairs of the company in Mike's absence. Their contributions are a big reason for the company's success. None of the other children work in the family business.

Current Estate Plan: 1991 Revocable Living Trust & Pour-Over Wills; Durable Powers of Attorney for Financial Affairs; Powers of Attorney for Health Care & Living Will. The Trust is an AB Trust that provides for division of the trust estate into a Survivor's Trust and an Exemption Trust pursuant to a funding formula following the death of the first spouse, at which time the Exemption Trust becomes irrevocable. The surviving settlor becomes the sole trustee. The Trust provides for an equal division of the trust estate among the settlors' six children, with a deceased child's share passing to his or her children by right of representation. The Trust also provides for outright distribution to the children and the creation of a separate share trust for any share passing to a grandchild or other issue, with discretionary distributions for health, support, maintenance or education, and then termination and outright distribution of the trust when the grandchild reaches the age of 21. Greg is designated as the first successor trustee and Marcia is the second successor trustee. The estate plan has never been reviewed or amended.

Assets of Mike and Carol

<u>Description</u>	<u>Title/Ownership</u>	<u>FMV</u>
1. Cash (Checking, Saving, CDs)	*See Note	\$750,000
*Most of the bank accounts are titled jointly between Mike and Carol; however, at least one account is titled jointly between Mike and Greg and another account is titled jointly between Carol and Marcia.		
2. Brokerage Accounts** (Stocks, Mutual Funds & Securities)	Living Trust	\$1 million (Basis of \$500K)

**More than 35% of Mike and Carol's stock portfolio consists of stocks in Getty Oil.

3. Real Estate:

Personal Residence Belmont Heights	Living Trust	\$1.7 million (No debt) (Basis of \$700K)
Commercial Property (Business leases from Mike and Carol)	Mike and Carol (JT)	\$750,000 (Debt of \$200K) (Basis of \$300K)
Vacation Home Big Bear (Refinanced 5 years ago but since paid off loan)	Living Trust	\$500,000 (No Debt) (Basis of \$150K)
8 Unit Apt. Bldg. Long Beach	Unknown to Client	\$1.0 million (No debt) (Basis of \$450K)
4. Family Business	Sole Proprietorship***	\$3.0 million (Basis of \$250K)

** No title evidencing ownership, but Mike filed a Fictitious Business Name Statement 15 years ago: "Mike Brady doing business as Johnny Bravo Surfboards." Business bank accounts are titled in the name of the business.

<u>5. Retirement Accounts</u>	<u>Beneficiaries</u>	<u>Balance</u>
Mike's IRA	1 st - Carol 2 nd - None	\$950,000
Carol's IRA	1 st - Carol's Children 2 nd - Mike	\$450,000

6. Life Insurance

<u>Company</u>	<u>Owner</u>	<u>Insured</u>	<u>Beneficiary</u>	<u>Cash Value</u>	<u>Death Benefit</u>
NY Life	Mike & Carol	Mike	1 st Carol 2 nd Children	\$50,000 (Whole)	\$500,000
MetLife	Mike & Carol	Carol	1 st Mike 2 nd Children	None (Term)	\$350,000
				NET VALUE -	\$10.1 million
				Plus Life Ins.	<u>850,000</u>
					\$10,950,000

Additional Facts to Be Added to Discussion at Moderator’s Discretion

1. Same basic facts as set forth in the original hypothetical above, except that you receive the initial phone call from Greg with concerns that his father is getting more and more “forgetful” and making questionable decisions at work. He believes that his father may have the onset of Alzheimer’s disease or dementia. He is also concerned that his sister Jan, who is going through a divorce and temporarily lives with Mike and Carol, is taking advantage of Mike’s weakened mental state and unduly influencing Mike to give her substantial sums of money.
2. Same basic facts as set forth in the original hypothetical above, except that Mike and Carol are in their mid to late 80s. You receive the initial phone call from Jan, who has been living with and caring for Mike and Carol for about 8 years. Jan tells you that Mike and Carol want to “change their will” to leave the house to Jan. Jan tells you that although Mike and Carol are only in fair health, they are still capable of making their own decisions. Neither Mike nor Carol can drive, so Jan will bring them to the meeting.
3. Same basic facts as set forth in the original hypothetical above, except that during your initial consultation with Mike and Carol, they tell you that they have some charitable intentions, but they don’t know whether it would be “better” to make major charitable contributions now (i.e., during their lifetimes) or at their deaths. They also want to know whether it would be better to gift specific assets to the charities or make cash bequests.
4. Same basic facts as set forth in the original hypothetical above, except that Greg calls a geriatric care manager to set up a meeting with Mike and Carol, who are in their mid to late 80s and living on their own, because he is concerned that Mike can no longer adequately care for himself and Carol is no longer capable of providing the care he needs. Upon visiting Mike and Carol, the geriatric care manager sees some evidence of hoarding and, after talking with Carol, suspects that Bobby is taking advantage of Mike and Carol (financially) in order to feed his drug habit.