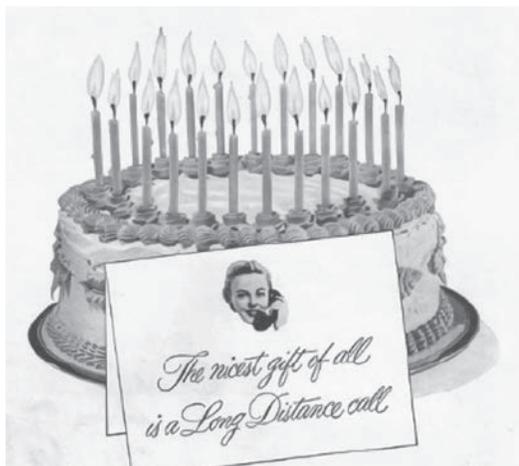


# ESTATE PLANNING & PRIVACY

Jack Davidson

## COMMUNICATION AND THE COST OF PRIVACY

Understanding communication in the early sixties was a challenging issue for college students. As a first-year student faced with learning liberal arts, understanding mathematics was a critical piece for survival. Do I write a long letter to my parents that will cost 4 cents, or do I make a long distance call that will cost \$3.50, if I don't talk over 3 minutes?



In those days, gas would cost perhaps 30 cents, but many college students did not own cars so the analysis of

when to call home, or travel home, was an issue. The bus or train might be helpful, but not often used by many students until Thanksgiving.

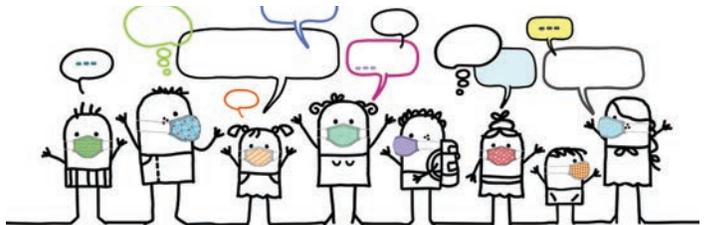
In my first semester, I made a profound financial decision. Should I call my girlfriend or my parents? Communication can be very complex.

After my arrival in Vermont, in 1971 I moved from Brattleboro to East Dummerston and discovered another complexity: phone party lines. As I recall, I did not have a choice. The service was common in sparsely populated areas where remote properties were spread across larger distances. In my neighborhood, we had three neighbors who shared the same phone line, so I could listen to their calls and they



could listen to mine. One day I called a friend, and as a joke, I said "Joe, I think one of my neighbors is listening". I did not think that any of my neighbors were listening until I heard an angry "Oh really?" and one of my neighbors exited with some anger, based on the sound of a slamming phone.

It has become evident during this pandemic crisis, that communication is very important. For the most part, Zoom® calls are cost effective and a wonderful way to bring families and friends together, but privacy may be an issue. Our smartphones are a

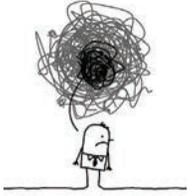


wonderful and cost effective way to communicate, but they may not be as private as one might think.

Privacy in estate planning has many pluses, and perhaps a few negatives. Many planners recommend a Living Trust and a Pour-Over Will to not only save probate costs, but to ensure privacy. The Will, which is a public record, simply says everything goes to a non-testamentary Trust, called a Living Trust, which will insure the provisions of the trust and the administration of the trust assets will remain private. Only assets passing through the estate will become public, and many planners will address this issue as well. For example, lawyers might suggest that the client be the trustee of their revocable living trust and transfer many, if not most, of their

assets to the trust, naming the client as trustee. The client can still control the account as if the trust did not exist, and in most cases, the name change will not require a separate tax return. The assets will continue to be taxed on the client's income tax return as if the trust did not exist, until death of the client.

One negative of privacy is the behavior of the trustee. Some trustees may be inclined to benefit themselves rather than the beneficiaries. Some trustees may unknowingly misbehave. A trustee needs to comply with complex fiduciary and tax laws. Selecting corporate trustees will insure privacy, and will be privately supervised by regulatory authorities. For example, in Vermont, the Department of Financial Regulation monitors the Trust Company of Vermont.



Another factor to consider is the relationship between an individual trustee and the lawyer who drafted the document and/or the firm, especially if the lawyer is older than the client. Individual trustees have to deal with complex legal laws and fiduciary tax returns, and the periodic guidance of an experienced advisor is important.

When creating or revisiting your estate plan, consider those who will receive accountings each year. If they see misbehavior, they can ask the Probate Court to review the actions of the trustee. Also consider a Trust Protector (14A V.S.A. § 1101), for example, a family friend, who can monitor the actions of the trustee.



In summary, privacy and cost of supervision is often an important aspect of planning. Laws are built on a foundation of rationality. Communication is very important and communication is complex.

I still ponder my decision to call my girlfriend rather than my family. In my first year of college, my absent-minded brain was, unfortunately, fully formed. I found a phone booth, inserted many quarters and absent-

mindedly dialed my home number rather than my girlfriend's number. At the time, my parents were challenged by the financial crisis of having three of their five children in college, all subject to the expense of long distance calls. When I heard my mother's hello



I thought "what is she doing at my girlfriend's house?" "Hello?" she said once again. In those days, you could not tell who was calling. She only heard silence. And then she said "Jack, you were calling Mary Ann, weren't you?"



### IN MEMORY

**ERNEST W. GIBSON III** was a founding director of the Trust Company of Vermont. His erudition, gentle wit and careful counsel left a deep impression on all of us who knew him. Careful with his words, he could command a room with a natural gravitas, befitting the Justice he was. He contributed generously to our company's early days and will always be missed and fondly remembered.

### Congratulations to John Abel!

John Abel, a founder of Trust Company of Vermont, recently retired. John was an integral part of our company, and his contributions will always be valued and remembered. His skills, hard work, commitment, and dedication were very important to us and he will be greatly missed.



*We wish him all the best!*