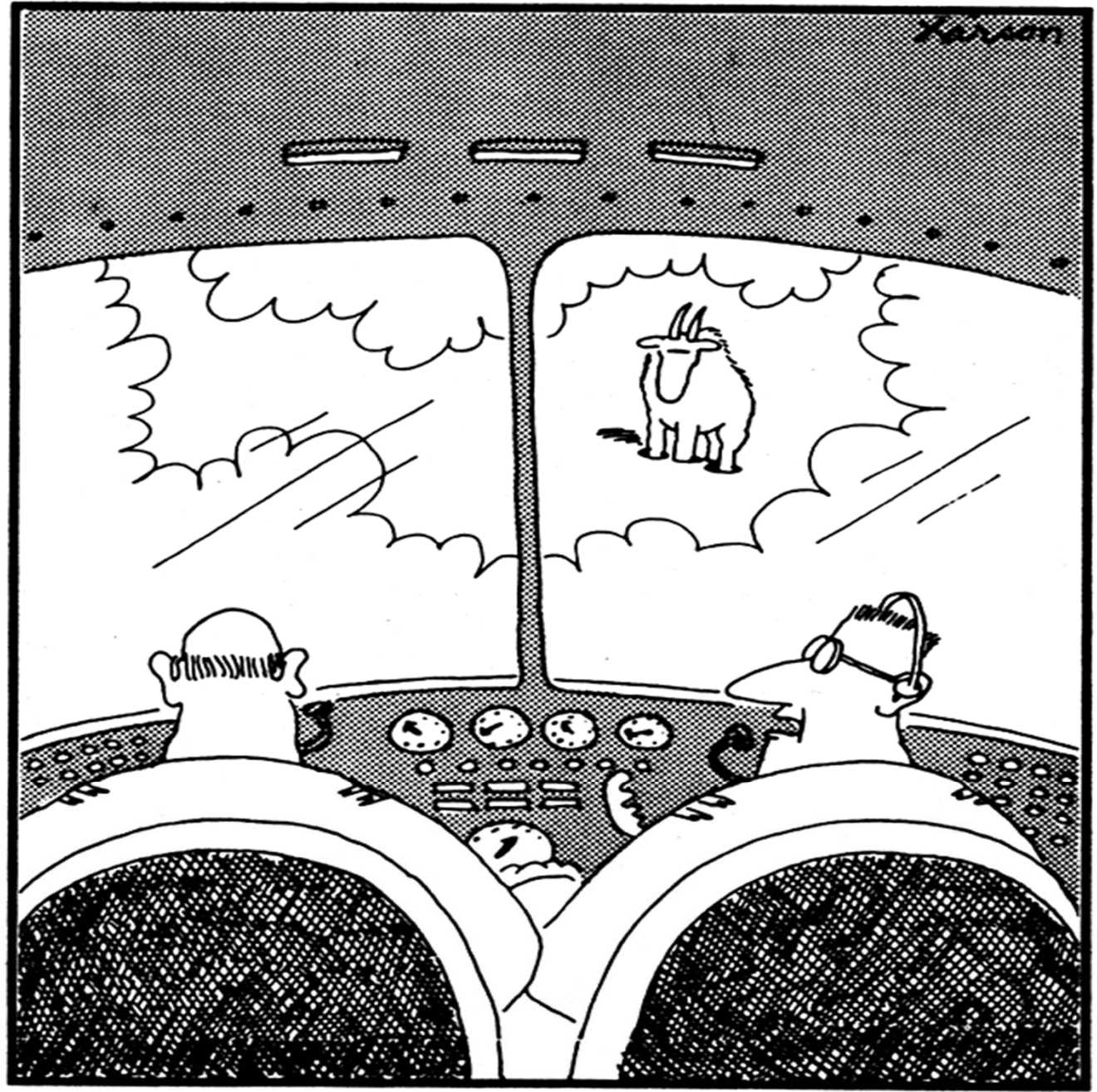


ESTATE PLANNING GEMS

JOHN F. BERGNER
Winstead PC

Tulsa Estate Planning Forum
October 8, 2018

Why are
we here?



**"Say . . . What's a mountain goat doing way up here in
a cloud bank?"**

Overview

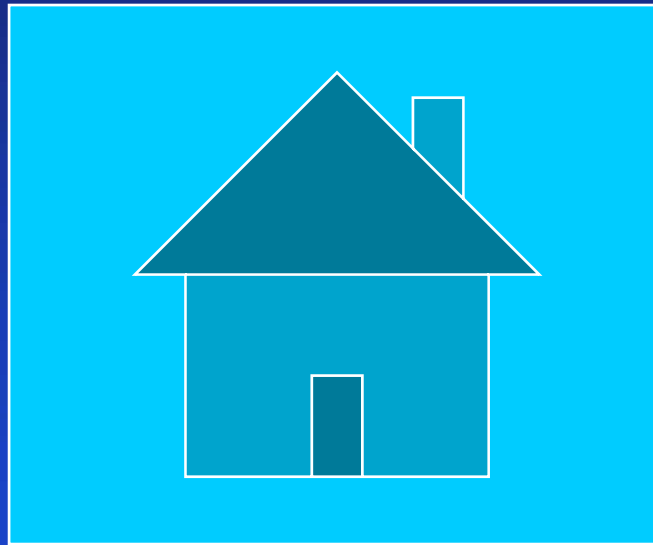
- Residence planning
- GRATs
- ILITs
- Gift and estate tax returns
- Wills and revocable trusts
- Grantor trusts
- Charitable planning
- Specific planning situations

Residence Planning

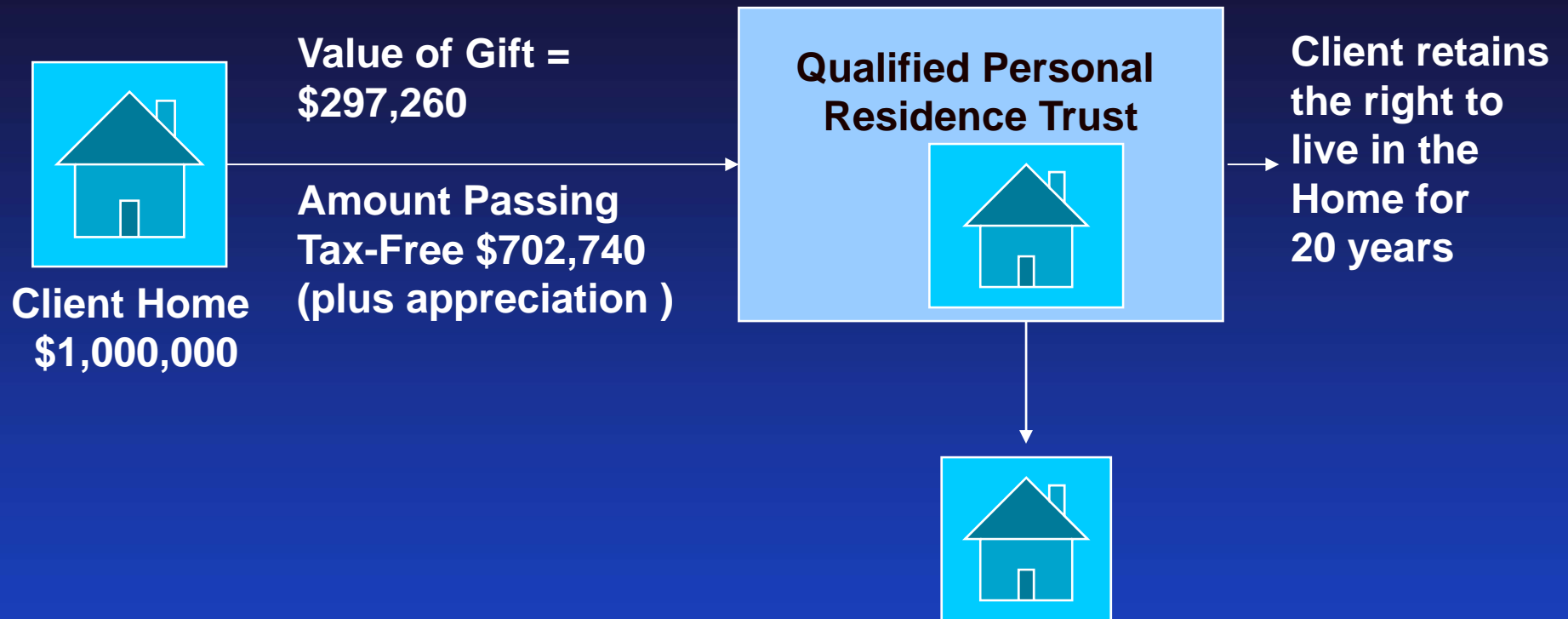
Residence Planning

- **Loans to family members**
 - **Low interest rate (2.51% / 2.86% / 3.02%)**
 - **Secured by lien on residence**
- **Rent free use of a residence**
 - **Problem: deemed gift**
 - **Solution: co-ownership with parents**

Qualified Personal Residence Trust ("QPRT")



QPRT Example



At end of 20-year term, Home is distributed to children - tax-free

Requirement: client must survive 20-year term

Assumptions: client is age 60; retains reversion if death occurs before trust terminates; Section 7520 rate is 3.4% (September, 2018)

QPRT Problems

- **Low AFR increases taxable gift**
- **Can't leverage GST exemption**
- **Parent must pay rent after the retained term expires**
- **Death during retained term voids tax benefits**

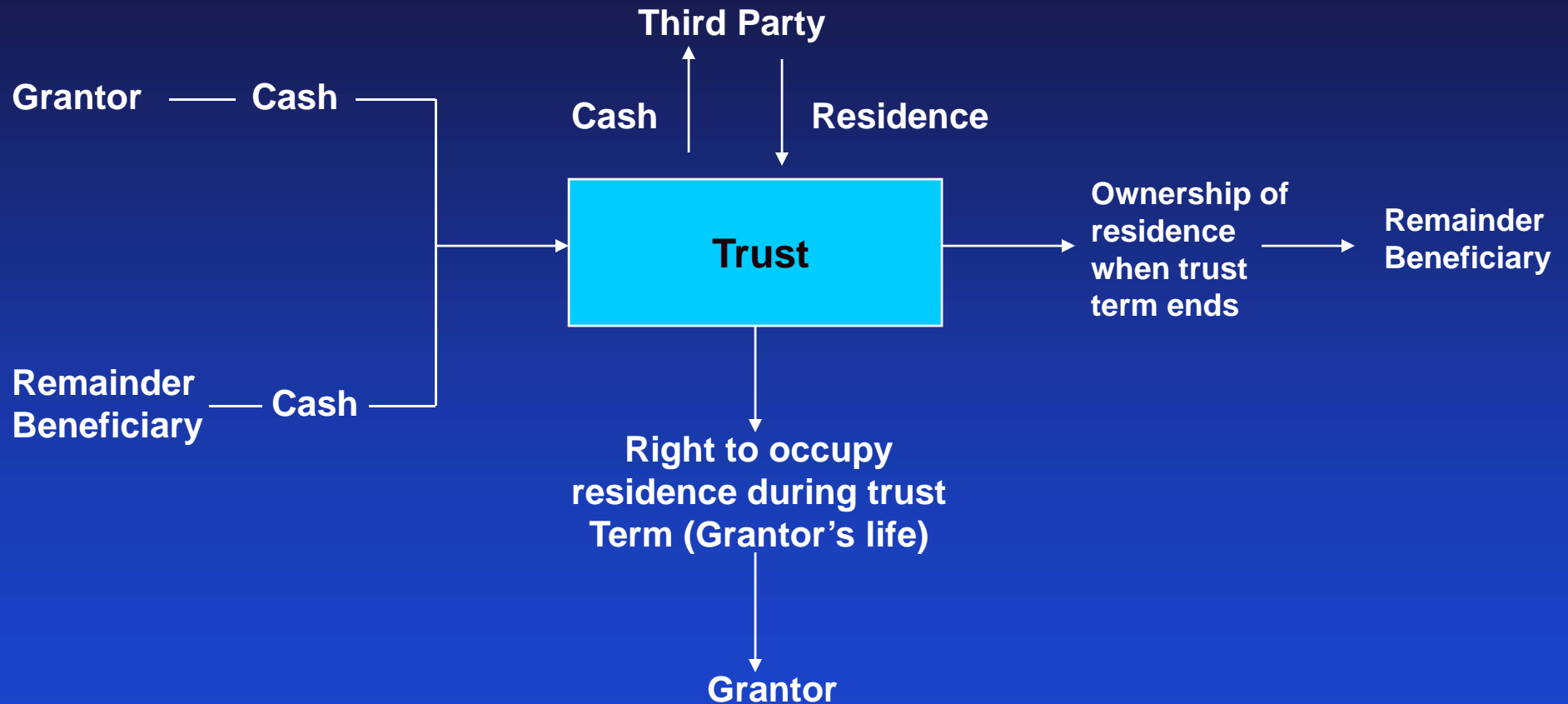


"Well, I'm not sure. ... You don't carry any other styles?"

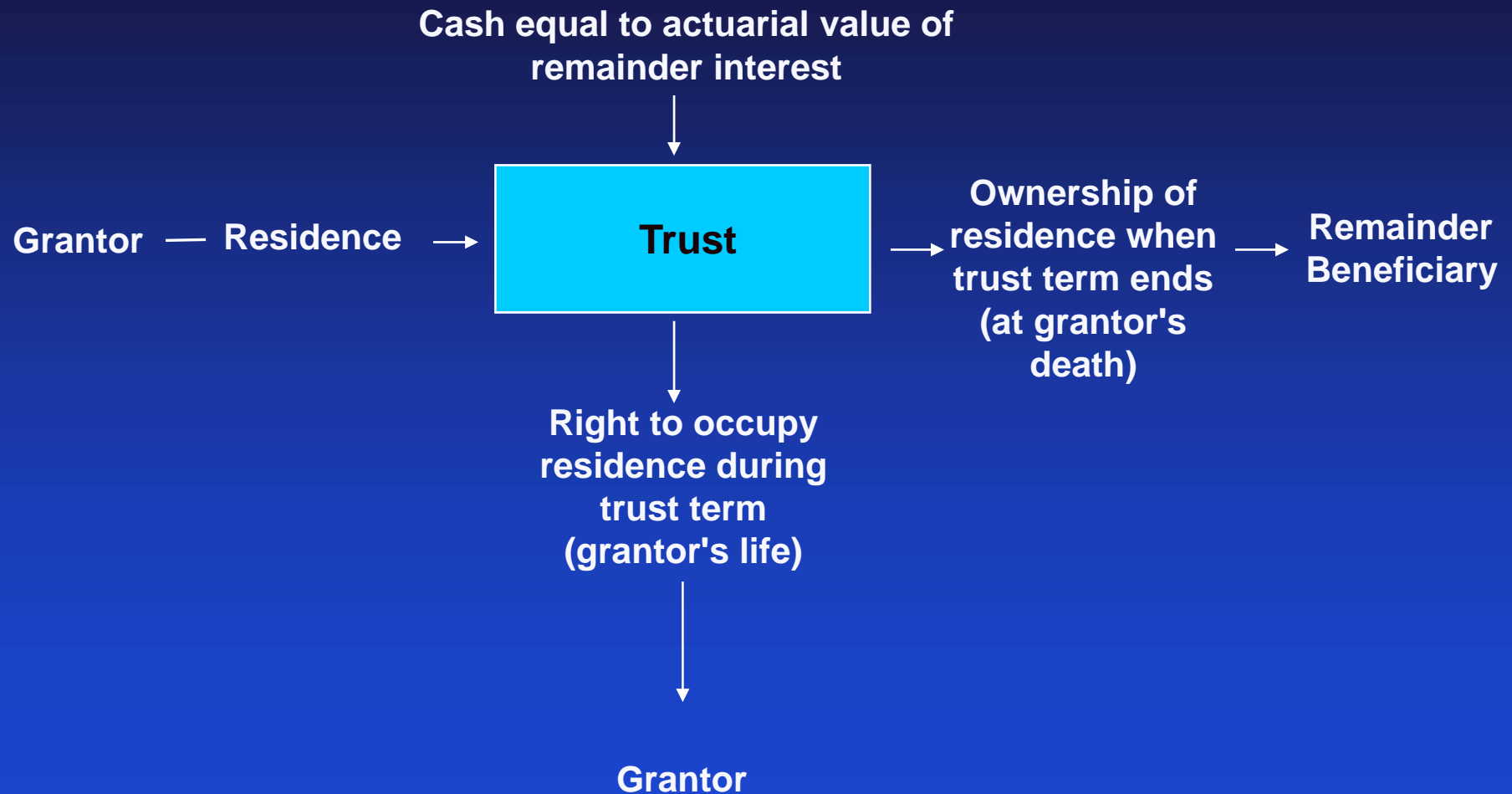
Split-Purchase QPRT



Split-Purchase QPRT



Split-Purchase QPRT

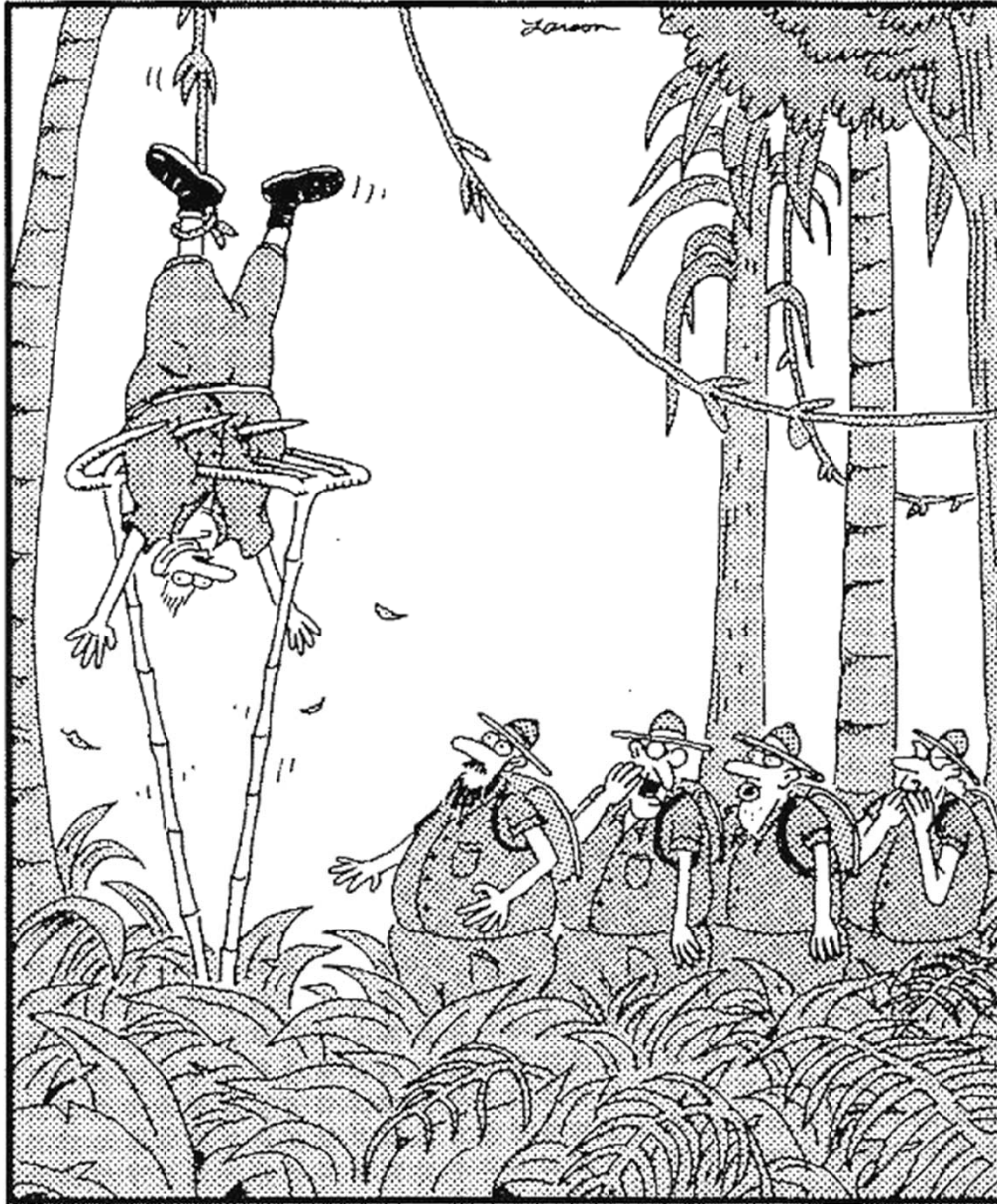


Split-Purchase QPRT Benefits

- No gift
- GST exempt trust may acquire remainder interest
- No requirement to pay rent after retained term
- No mortality risk

Forum Shopping

- Some courts are more “taxpayer friendly”
- Fifth circuit – valuation case law
- Domicile of executor determines jurisdiction



“That’s why I never walk in front.”

GRAT Planning

Two Year GRAT



At the end of the 2 year term, the remaining trust assets are distributed to children. With 20% annual growth, \$291,400 will be shifted to children

Requirement: Parent must survive 2 year term

*Gift is computed under Walton case, using September 2018 Section 7520 rate of 3.4% and annuity payments increasing by 20% per year

Distribution Summary for Two Year GRAT

<u>Year</u>	<u>Beginning Balance</u>	<u>20% Annual Growth</u>	<u>Annual Payment</u>	<u>Remainder</u>
1	\$1,000,000	\$200,000	\$478,583	\$721,417
2	\$ 721,417	\$144,283	\$574,300	\$291,400

Amount distributed to children - \$291,400

Gift leverage ratio – 291,400 to 1

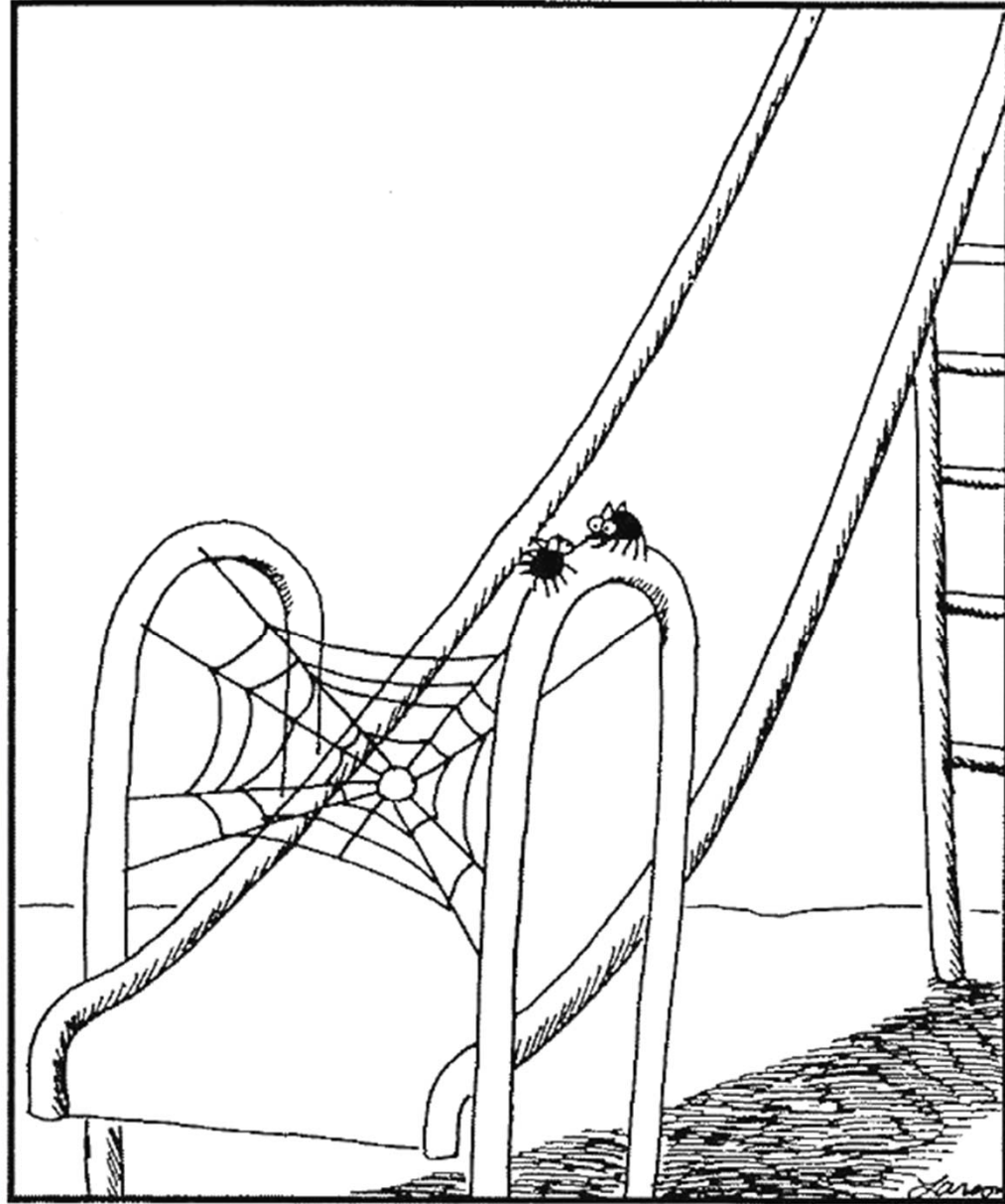
GRAT Attributes

Simple

Safe

Effective

Flexible



“If we pull this off, we’ll eat like kings.”

GRAT Planning

- **Express annuity amount as a percentage of assets contributed to GRAT**
- **Carefully express annuity amounts**
- **Fund GRAT on a single date**
- **Wrap hard-to-transfer asset in an entity**

GRAT Planning

- **Planning for closely-held corporate stock**
- **Take advantage of 105-day deferral period**
- **Guard against late annuity payments**
- **Avoid short-swing profits issues**
- **Fund GRAT with stock options**
- **Plan for blockage discounts**

ILIT Planning

ILIT Planning

- **Avoid tainting spousal ILITs with community property**
- **Illusory crummey powers?**
- **Granting or expanding crummey powers**
- **Avoiding 3-year inclusion rule**
- **Fixing broken ILITs**

Wills and Revocable Trust Planning

Executor/Trustee Appointment

- **Clients typically desire flexibility**
- **Revocable trusts often grant beneficiaries the power to remove trustee**
 - **Balances authority of trustee/beneficiary**
 - **Empowers beneficiaries to negotiate fees**
 - **Enables beneficiaries to address concerns regarding investment performance; trustee responsiveness, etc.**

Executor/Trustee Appointment

- **Problem:** Will cannot grant beneficiaries power to unilaterally remove executor
- **Solution:** Client and potential executor sign agreement regarding executor's agreement to decline or resign appointment at beneficiaries' request

Charitable Gifts

Lifetime
VS.
Testamentary

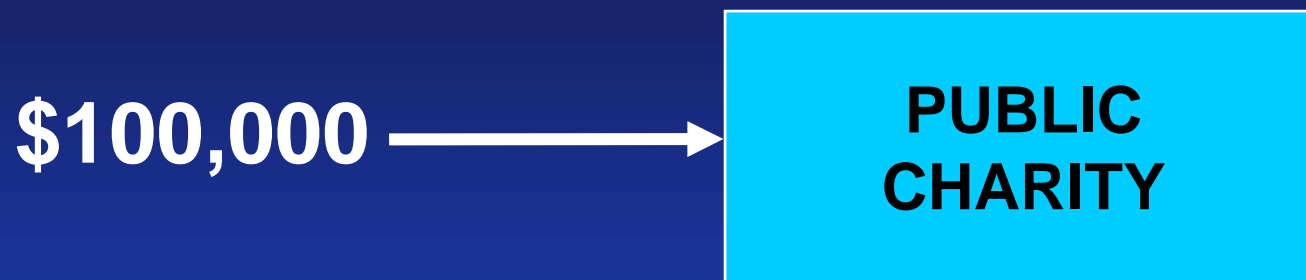
Charitable Gifts

Lifetime vs. Testamentary

- **Transfers during lifetime:**
 - Obtain both gift tax and income tax deductions
- **Transfers upon death:**
 - Obtain only an estate tax deduction

Charitable Gifts

Lifetime vs. Testamentary



37% income tax bracket

40% estate tax bracket

Charitable Gifts Lifetime vs. Testamentary

Transfer at death: Total tax savings - \$40,000

Transfer during life: Total tax savings - \$77,000

Planning Opportunity

- **Fact Pattern:** H wishes \$1,000,000 be distributed to charity upon his death but wants family to obtain both income and estate tax charitable deduction
- **Solution:** H's estate plan leaves \$1,000,000 to W if she survives with a precatory request that W gift the funds to charity; If W fails to survive, bequest is made
 - Bequest qualifies for marital deduction
 - W makes lifetime gift to charity
 - H's estate plan may include QTIP Trust to ensure \$1,000,000 distributed to charity at W's later death if not made during W's lifetime

Individual Gifts

Lifetime
VS.
Testamentary

Lifetime Gifts to Save Estate Taxes

Gift taxes are calculated on a tax *exclusive* basis, while estate taxes are calculated on a tax *inclusive* basis

Testamentary
transfer

\$1,667,000

Estate taxes
\$667,000

Net to heirs:
\$1,000,000

Lifetime
transfer

\$1,400,000

Gift taxes
\$400,000

Net to heirs:
\$1,000,000

Planning Opportunity

- Fact Pattern: W wishes \$1,000,000 be distributed to Sister upon her death but wants family to minimize transfer taxes
- Solution: W's estate plan leaves \$1,400,000 to H if he survives with a precatory request that H gift \$1,000,000 to Sister; If H fails to survive, bequest is made
 - Bequest qualifies for marital deduction
 - H makes lifetime gift to Sister
 - W's estate plan may include QTIP trust to ensure \$1,000,000 distributed to Sister at H's later death if not made during H's lifetime

Inherited Retirement Assets

- Generally subject to income tax
- Problem:
 - Beneficiary receives a Form 1099 stating amount of distribution
- Solution:
 - Ensure clients claim IRC section 691(c) deduction
 - File amended income tax returns

Inheritance Planning

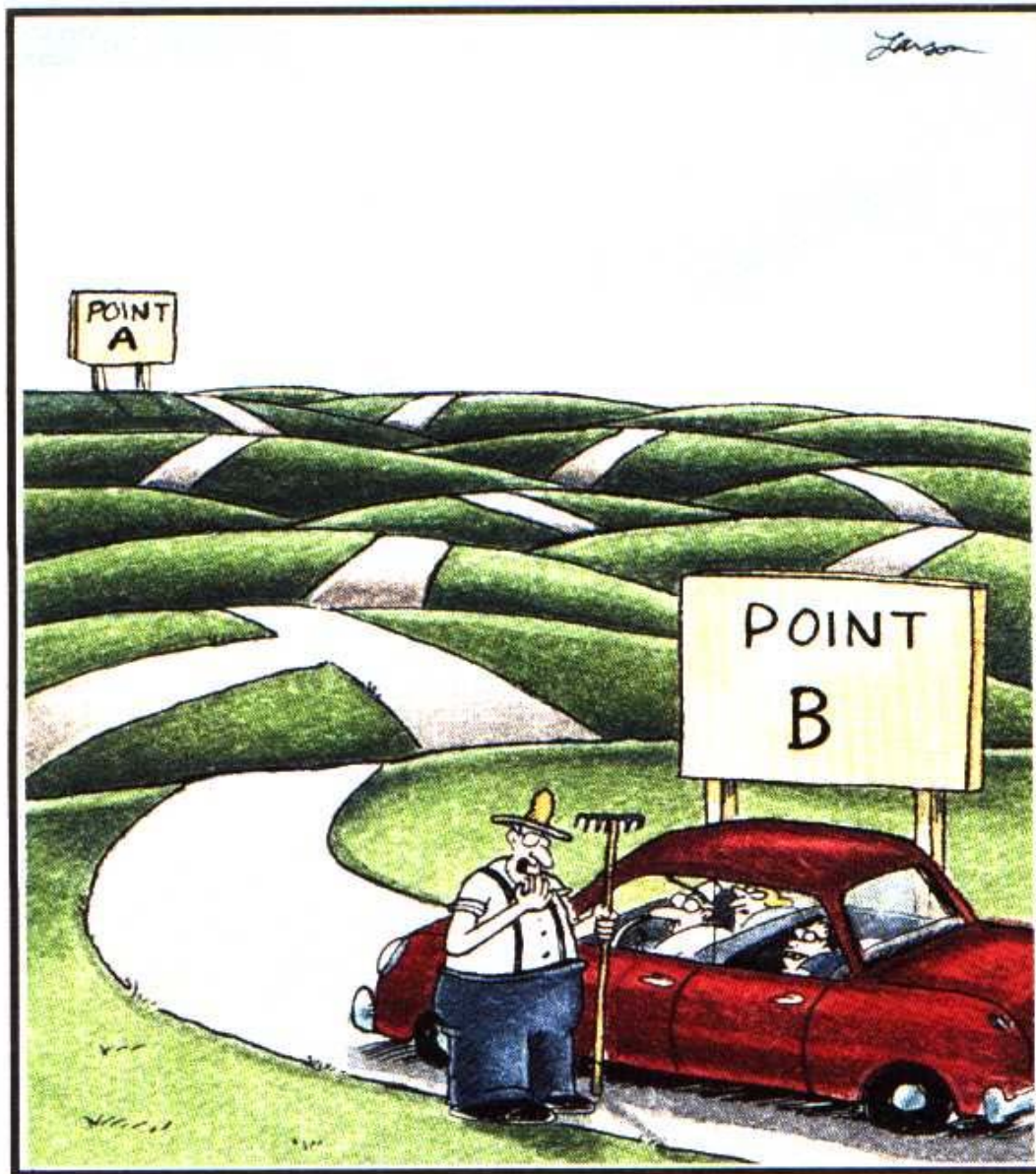
Inheritance Trust

Problem:

- Client with taxable estate named as beneficiary under other estate plans (outright and not in trust)

Solution:

- Structure estate plans to distribute assets in a beneficiary-friendly trust



“Well, lemme think. ... You’ve stumped me, son.
Most folks only wanna know how
to go the other way.”

Inheritance Trust

- **Trust Structure**
 - **Client is trustee and beneficiary**
 - **Client entitled to distributions for HEMS**
 - **Client granted a limited power of appointment**

Inheritance Trust

- **Benefits**
 - **Creditor protection**
 - **Divorce protection**
 - **Estate tax protection**

Inheritance Trust

- **Hidden Objections:**
 - **Client uncomfortable discussing potential inheritance with family member**
 - **Sophisticated estate planning not available to family member**

Inheritance Trust

- **Overcoming hidden objections:**
 - **Client letter explaining opportunity**
 - **Standby inheritance trust with simple codicil**

Buy-Sell Agreements

- Determine estate tax value if
 - Formula or fixed price
 - Shareholder's estate is obligated to sell
 - Restrictions on sale apply during shareholder's lifetime
 - Bona fide business arrangement
 - Comparable



“AAAAAAAAAA! MURRAY! ...
A spider was in my shoe!”

STOCK OPTION TRAP

Stock Option Trap

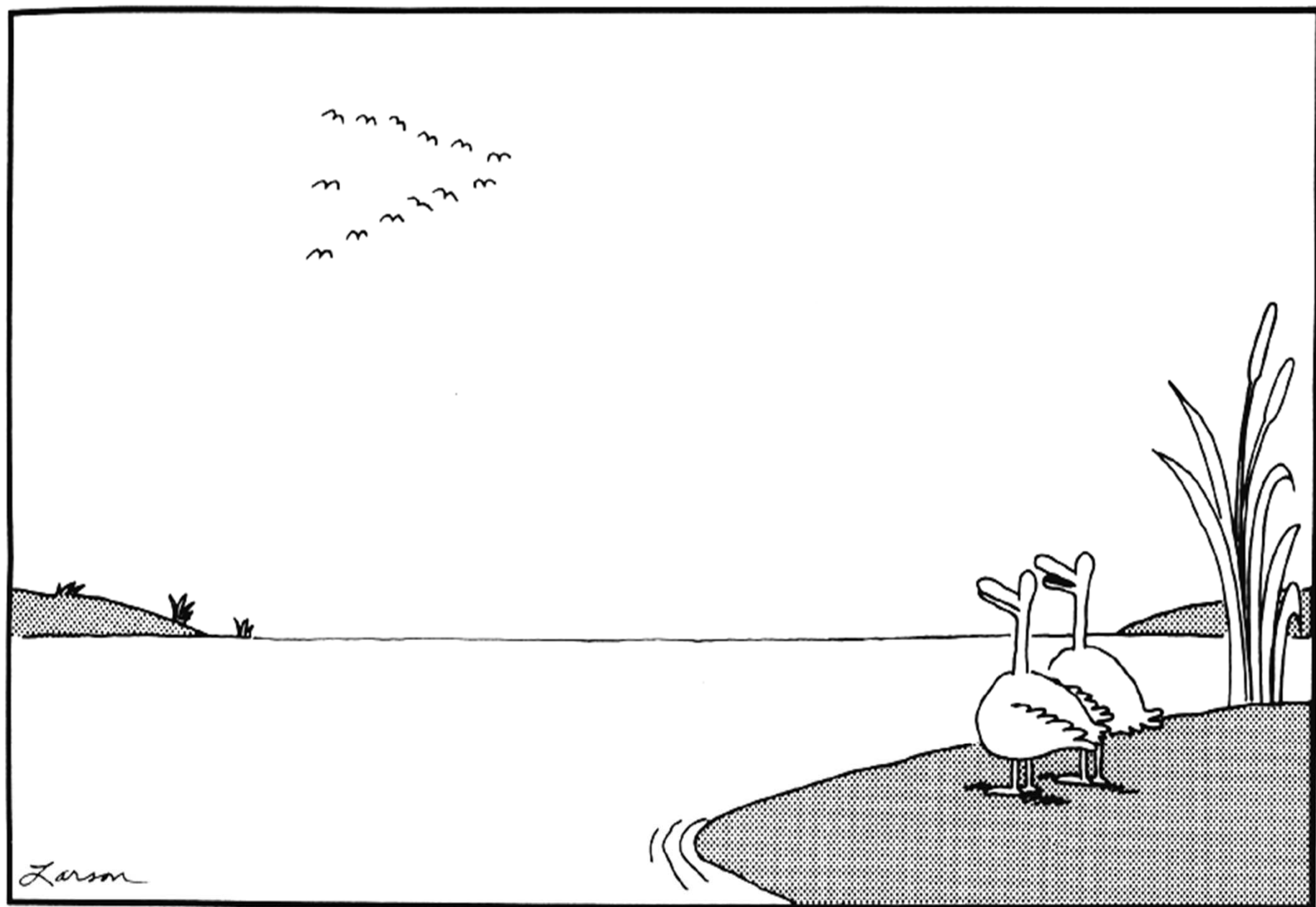
- Under-water options at death
- Estate tax value
- Phantom asset
- Disclaimer to charity
- Requires advance planning

Miscellaneous Issues

- **UTMA accounts – selection of custodian**
- **Previously tax property credit**
- **Return preparer penalties**
- **Appraiser penalties**
- **Characterization of trust distributions**

Miscellaneous Issues

- Limited partnership planning
- Alternative methods of making taxable gifts
- Defined value clauses
- Gift tax returns
 - Installment sale reporting
 - GRATs – adequately shown
 - GRATs – ETIP



"I just can't tell from here. ... That could either be our flock, another flock, or just a bunch of little m's"

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