WINNER'S CURSE: THE NECESSITY OF ESTATE PLANNING FOR TEXAS LOTTERY WINNERS

Comment

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I. INTRODUCTION

Most people have heard the saying: "You have a better chance of getting struck by lightning than winning the lottery . . . ."[1] In fact, the odds of winning the lottery jackpot prize in Texas are approximately 1:25,827,165 for Lotto Texas and 1:175,223,510 for Texas Powerball, respectively.[2] Because players believe that they are unlikely to win, estate planning concerning the great amount of prize money at stake is usually the furthest thing from the players' minds; instead, they are focused on the fantasy of how the winnings will solve all their problems.[3] However, without careful estate planning concerning receipt and management of the prize, winners can find themselves worse off than before their "lucky" break.[4]

In Pennsylvania, William "Bud" Post won a $16.2 million jackpot prize in 1988.[5] While most people would believe that someone like Mr. Post would be able to live in peace for the rest of his days, it was quite the opposite as he experienced a series of harrowing events.[6] Mr. Post's brother tried to hire a hit man to murder him for the inheritance, his landlady swindled him of a third of the jackpot money, a court convicted him of assault, and he accumulated a tremendous amount of debt to the point he had to auction off the rest of his lottery payments.[7] Until his death in 2006, Mr. Post was living off a $450-per-month disability check.[8] Mr. Post admitted toward the end of his life that "[he] was much happier when [he] was broke."[9]

In Florida, Waffle House employee Tonda Lynn won a $10 million jackpot.[10] Her coworkers sued her for breach of contract alleging that she

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1. *See, e.g.*, *Kansas Man Hit by Lightning After Buying Mega Millions Tickets*, ABC News (Apr. 1, 2012, 10:47 PM), http://abcnews.go.com/blogs/headlines/2012/04/kansas-man-hit-by-lightning-after-buying-mega-millions-tickets/.
2. *See How to Play Powerball*, TEX. LOTTERY, http://www.txlottery.org/export/sites/lottery/Games/Powerball/How_to_Play_Powerball.html (last visited Sept. 4, 2014); *see also How to Play Lotto Texas*, TEX. LOTTERY, http://www.txlottery.org/export/sites/lottery/Games/Lotto_Texas/How_ to_Play_Lotto_Texas.html (last visited Sept. 4, 2014).
3. *See 7 Lotto Winners Who Lost It All*, THE WEEK (Jan. 10, 2013), http://theweek.com/article/index/203753/7-lotto-winners-who-lost-it-all.
4. *See id.*
5. *Id.*
6. *See id.*
7. *Id.*
8. *See id.*
9. *Id.*
10. Kelly Phillips Erb, *Waffle House Waitress Wins Big in the Lottery, Loses at Tax Court*, FORBES (Mar. 6, 2012), http://www.forbes.com/sites/kellyphilip serb/2012/03/06/waffle-house-waitress-wins-big-in-the-lottery-loses-at-tax-court.

orally agreed to share the winnings with them.[11] Although she ultimately prevailed in the suit, she also ran into tax trouble.[12] The Internal Revenue Service levied an unpaid gift tax of $771,570 because she transferred 51% of the shares of the S-corporation she formed to hold her winnings to her family.[13] The tax court rejected Ms. Lynn's argument that the transfer was contractual in nature and held that Ms. Lynn made a gift.[14]

Mr. Post and Ms. Lynn represent a particular set of clients for estate planning attorneys, given their unique circumstances and unique problems.[15] Unfortunately, there are more distressing stories in which lottery winners have gambled away or spent all their winnings, declared bankruptcy, or even committed suicide due to personal circumstances involving their win.[16] It is clear that careful estate planning is necessary for new lottery winners to not only preserve their wealth but also to protect their life and limb.[17]

Overall, this comment will discuss the factors that would affect estate planning for Texas lottery winners and will make a recommendation as to the best scheme to protect these clients.[18] Within the current estate-planning environment, the article will address certain tools to accomplish general lifetime objectives such as retirement income, income for disability, and ease of estate management in the case of incapacity.[19] This comment will first address how the Texas Lottery works from filling out the ticket itself to collecting the winnings.[20] Next, it will focus on how the recently passed American Taxpayer Relief Act of 2012 affects estate planning for these winners.[21] Then the article will discuss initial preparations before acceptance of the prize.[22] It will then examine the trusts and any tax concerns that winners should consider at the estate planning stage.[23] Finally, the article will make a general recommendation that will optimally protect and preserve the wealth of the winners.[24]

II. THE TEXAS LOTTERY SYSTEM AND ITS OPERATIONS

Before considering the estate planning mechanisms and tax considerations necessary to protect the lottery winners' soon-to-be acquired assets, the estate

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11. *See id.*
12. *See id.*
13. *Id.*
14. *Id.*
15. *See 7 Lottery Winners Who Lost It All*, *supra* note 3.
16. *See* Mandi Woodruff & Michael Kelley, *19 Lottery Winners Who Blew It All*, BUS. INSIDER (May 19, 2013), http://www.businessinsider.com/17-lottery-winners-who-blew-it-all-2013-5?op=1.
17. *See infra* Parts IV–V.
18. *See infra* Part VI.
19. *See infra* Part V; *see also* HAROLD WEINSTOCK & MARTIN A. NEUMANN, PLANNING AN ESTATE: A GUIDEBOOK OF PRINCIPLES AND TECHNIQUES § 1.2 (4th ed. 2012).
20. *See infra* Part II.
21. *See infra* Part III.A.
22. *See infra* Part IV.
23. *See infra* Part V.
24. *See infra* Part VI.

planning attorney must know exactly how the lottery system operates—especially how and who can accept the prize.[25] The exploration of who can accept the prize, as well as the nature of lottery winners, will later serve to derive a comprehensive scheme of estate planning to achieve optimal asset preservation and identity anonymity.[26]

A. Claiming the Lottery Prize

In Texas, the lottery derives its authority from the Government Code.[27] According to section 466.408(b) of the Code, once the selection process of each lottery game is complete, the winner has 180 days to claim the prize or else the winner forfeits and the winnings will revert back to the State of Texas.[28] An exception to this rule may be made for active military personnel, especially those serving overseas.[29] The Government Code defines "prize winner" as "a person who presents a valid winning ticket, claims a lottery prize, and is recognized by the commission as the person entitled to receive lottery prize payments."[30] A "person," as determined by statute, does not exclusively mean a natural person but also "includes corporation[s] . . . , business trust[s], estate trust[s], partnership[s], association[s], and any other legal entit[ies]."[31]

In case more than one person wins (i.e., more than one winning lottery ticket), those that claim the prize will have to equally share the winnings.[32]

B. Special Issues Concerning the Winnings

If the winner has overdue taxes, owes money to a state agency, or has defaulted on state student loans, the Texas Lottery Commission will deduct that amount from the prize.[33] Additionally, under the Texas Lottery Code, the Lottery Commission will deduct from the winnings any delinquent child support payments still pending.[34]

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25. *See infra* Part II.A.
26. *See infra* Parts IV–V.
27. *See* TEX. GOV'T CODE ANN. § 466.001 (West 2007).
28. *See id.* § 466.408(b).
29. *Id.* § 466.408(e) ("An eligible person serving on active military duty . . . may claim a lottery prize not later than the 90th day after the date on which the earliest of the following occurs: (1) the person is discharged from active military duty; (2) the person returns to this state for more than 10 consecutive days; (3) the person returns to nonactive military duty status in the reserve or national guard; or (4) the war or national emergency ends.").
30. *Id.* § 466.4001.
31. *Id.* § 311.005; *see also* 16 TEX. ADMIN. CODE § 401.227 (2012) (Tex. Lottery Comm'n, Definitions) (defining a "person" to include a "trustee, trustee in bankruptcy, assignee, or any other group or combination acting as a unit").
32. TEX. GOV'T CODE ANN. § 466.404(a) (West 2007).
33. *Id.* § 466.407.
34. *Id.* § 466.4075.

As the article will discuss later, lottery winners can elect to receive their winnings in the form of an annuity payment.[35] Before 2010, these installment payments, under the Texas Lottery Act, were generally not assignable without permission from a judicial order.[36] The Texas Supreme Court, however, rendered this anti-assignment provision of the Government Code ineffective.[37] In *Texas Lottery Commissioner v. First State Bank of DeQueen*, the court resolved a conflict between section 466.406 of the Government Code, prohibiting assignment, and Article 9 of the Texas Uniform Commercial Code (UCC), allowing assignment of winnings as collateral for security interests.[38] In this case, the debtor's lottery winnings were in the form of annuity payments.[39] The debtor arranged to have his right to the last two payments assigned to the bank to pay off a previously incurred debt.[40] The Lottery Commission refused to recognize the assignment under the anti-assignment provision of the Government Code.[41]

The bank and the debtor argued that sections 9.406(a) and 9.102(a)(2)(viii) of the UCC allowed for account assignments—such as the assignment of lottery winnings—and should supersede the Texas Lottery Act.[42] Ultimately, the court held that the Government Code is ineffective in prohibiting the debtor's ability to assign his lottery winnings because of the clear legislative intent found within the statutory language of section 9.406(f) of the UCC.[43] Under this section:

> [A] rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, or account debtor to the assignment or transfer of . . . an account or chattel paper is ineffective to the extent that the rule of law, statute, or regulation . . . prohibits, restricts, or requires the consent of the government, governmental body or official, or account debtor to the assignment or transfer of . . . the account or chattel paper.[44]

The court also held that the Lottery Commission's ability to deduct winnings for delinquent taxes and pending child support payments will be limited as far as it would restrict or prohibit a debtor's assignment of winnings.[45]

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35. *See infra* Part IV.A.
36. TEX. GOV'T CODE ANN. §§ 466.406, 466.410(b) (West 2007).
37. *See* Tex. Lottery Comm'n v. State Bank of DeQueen, 325 S.W.3d 628, 639 (Tex. 2010).
38. *Id.*
39. *Id.* at 631.
40. *Id.*
41. *Id.*
42. *Id.* at 635.
43. *Id.* at 639.
44. TEX. BUS. & COM. CODE ANN. § 9.406(f) (West 2009).
45. *See DeQueen*, 325 S.W.3d at 640.

III. Special Tax Considerations of Lottery Winnings

An optimal estate plan that achieves a client's objective will always try to utilize tools that save as much as possible in paying taxes.[46] The preservation of wealth with respect to taxes will not only allow clients to more fully enjoy the estate during their lifetime but also will allow the clients' families to meet their needs after death.[47] When considering the best estate plan for a particular lottery winner, estate planning professionals should be aware of the tax climate currently in flux due to federal legislation and recent case law.[48]

A. The American Taxpayer Relief Act

President Obama signed the American Taxpayer Relief Act of 2012 into law on January 2, 2013.[49] Since its passage, the American Taxpayers Relief Act has impacted estate planning for many different types of clients.[50] In particular, estate planning professionals should pay special attention to the changes in estate, gift, and generation-skipping tax rates, as well as to portability.[51]

1. Changes in the Estate, Gift, and Generation-Skipping Tax Rates

Under the Taxpayer Relief Act, the lifetime exemption amount for estate, gift, and Generational-Skipping Transfer (GST) taxes remains unified at $5.25 million.[52] This number is approximately $10 million for married couples.[53] This means that individuals whose taxable estate amount is $5.25 million or less will not have to file a federal estate tax return if the taxpayer applies the full exemption amount to the estate tax.[54] The same exemption amount also applies to gifts made during the calendar year "if the donor died as of the end of the calendar year."[55] This exemption amount affects the calculation of the inclusion ratio that factors in to calculating the total GST tax.[56] Top marginal tax rates have increased from the previous 35% to 40%.[57] Estates whose

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46. *See* WEINSTOCK & NEUMANN, *supra* note 19, § 1.4.
47. *Id.*
48. *See infra* Part III.A–B.
49. American Taxpayer Relief Act of 2012, Pub. L. No. 112-240, 126 Stat. 2313 (2013) (codified as amended in scattered sections of 26 U.S.C.).
50. Linda B. Hirschson & Shifra Herzberg, *The American Taxpayer Relief Act: The End to Estate Planning Cliffhangers?*, 2013 EMERGING ISSUES 6945 (Mar. 18, 2013).
51. *See infra* Part III.A.1–3.
52. Hirschson & Herzberg, *supra* note 50; *see also* I.R.C. § 2010(c)(3) (2012 & Supp. I 2013) (stating the basic exclusion amount to be $5 million adjusted by cost-of-living approximating $5.25 million for 2013).
53. Hirschson & Herzberg, *supra* note 50; *see also* I.R.C. § 2010(c)(3).
54. *See* I.R.C. § 2010.
55. *Id.* § 2505(a).
56. *Id.* § 2631(a), (c).
57. *See id.* § 2001(c); Hirschson & Herzberg, *supra* note 50.

taxable estate amount is in excess of the exemption amount are mandated to pay tentative taxes at a schedule determined by section 2001(c) of the Internal Revenue Code.[58] Additionally, section 2001(c) also governs the gift tax rate.[59] The increase in the tax rate affects the amount of GST tax paid because it is calculated by multiplying the inclusion ratio, as will be discussed later, with "the maximum Federal estate tax rate in effect at the time of the [GST]."[60] Given that the amounts of the lottery prize vary from $4 million to approximately $100 million in Texas and the likelihood that the prize money through investment in a carefully prepared estate plan may have appreciated before the winner's death, the estate planner should pay special attention to the exemption and changes in the top marginal rate as it would add a considerable amount to the gross estate of the decedent.[61]

2. Portability

Generally, portability applies to a surviving spouse with respect to the estate tax.[62] The portability election, first introduced in 2010 as a temporary measure, allows decedents to transfer their entire estate to a surviving spouse without having to pay the estate tax.[63] The marital deduction establishes this so that the decedents' estate tax exemption—approximately $5.25 million for 2013—would not be used.[64] The American Taxpayer Relief Act made this feature permanent.[65] An executor of the estate must elect portability on a timely filed federal estate tax return, on Form 706.[66] From that point, the surviving spouses may apply their lifetime exclusion amount, as well as that of their decedent spouses between the gift and GST tax, or may apply the exclusion amount to the surviving spouse's estate tax if decedent spouse's lifetime exclusion amount (also called the deceased spousal unused exclusion amount (DSUE)) is either never used or only partially used.[67] If the surviving spouse becomes the Portability Executor, a conflict of interest would undoubtedly arise if the surviving spouse as executor elects the portability election on Form 706.[68]

58. I.R.C. § 2001(c) (indicating the top tax rate of 40% applies to excess of $1 million or more plus a tentative tax of $345,800).

59. *See id.*; Treas. Reg. § 25.2502-1 (as amended in 1992).

60. Treas. Reg. § 26.2641-1 (as amended in 2011); *see infra* Part V.B.2.e.

61. *See Lotto Texas Estimated Jackpot Calculation Documents*, TEX. LOTTERY, http://www.txlottery.org/export/sites/lottery/Games/Lotto_Texas/Estimated_Jackpot.html (last visited Sept. 6, 2014); WEINSTOCK & NEUMANN, *supra* note 19, § 2:3 (assuming a considerable amount of capital won is preserved throughout the life of the decedent from the time of claiming the prize).

62. *See* Treas. Reg. § 20.2010-2T (2012); *see* George D. Karibjanian & Lester B. Law, *Portability and Prenuptials: A Plethora of Preventative, Progressive, and Precautionary Provisions*, 27 PROB. & PROP. 37, 37 (May/June 2013).

63. Hirschson & Herzberg, *supra* note 50; Karibjanian & Law, *supra* note 62, at 37.

64. Hirschson & Herzberg, *supra* note 50; Karibjanian & Law, *supra* note 62, at 37.

65. Hirschson & Herzberg, *supra* note 50; Karibjanian & Law, *supra* note 62, at 37.

66. Treas. Reg. § 20.2010-2T; Karibjanian & Law, *supra* note 62, at 38.

67. *See* Treas. Reg. § 20.2010-3T(b)(ii)(2) (2012); Karibjanian & Law, *supra* note 62, at 37–38.

68. Karibjanian & Law, *supra* note 62, at 40.

Therefore, the attorney must insert a provision in the decedent's will that will allow the surviving spouse to appoint another person to serve as Portability Executor, who can properly elect the portability option.[69]

For lottery winners who are married couples, the portability election for the surviving spouse becomes significant in preserving the wealth of the estate because the DSUE of either spouse has the potential to save a considerable amount in tax liability.[70]

B. Federal Income Taxes and Lottery Winnings

As required by the Internal Revenue Code, all prizes, including prizes won through state lotteries, are included in gross income for the calculation of the federal income tax.[71] For the calendar year in which Texas pays the lottery winnings, the State of Texas, as payer, must provide a completed Form W-2G to the winner for signature.[72] The agency administering the lottery files Form W-2G to report the winnings to the IRS and sends copies of this form to the winner as required by the IRS.[73] The IRS requires the winner to complete Form 5754 and to send the completed form to the payer as a basis for the information on Form W-2G.[74] These IRS requirements apply to either a single individual or "a member of a group of two or more people sharing the winnings."[75] On Form 1040, the winner must report the amount of state winnings—shown in box 14 of Form W-2G.[76]

The IRS considers winnings earned when the payer makes an actual or constructive payment.[77] Constructive payment includes not only winnings credited but also winnings "set apart, for that person without any substantial limitation or restriction on the time, manner, or condition of payment."[78] As this comment will later discuss, lottery winners can elect to accept winnings either in a lump sum or annuity payments.[79] If the winner decides on either the lump sum or annuity payments that will be paid over a period of ten years, the IRS will require an annual reporting.[80] The annuity option requires the winner to report the amount received every year, which is recorded on Form W-2G and on the Other Income line on Form 1040.[81]

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69. *See id.*
70. *See* Treas. Reg. § 20.2010-3T(b)(ii)(2); Karibjanian & Law, *supra* note 62, at 43.
71. *See* I.R.C. § 74(a) (2012 & Supp. I 2013).
72. *See Instructions for Forms W-2G and 5754*, IRS 5 (2014), http://www.irs.gov/pub/irs-pdf/fw2g.pdf; *Form W-2G*, IRS (2014), http://www.irs.gov/pub/irs-pdf/fw2g.pdf.
73. *Instructions for Forms W-2G and 5754*, *supra* note 72, at 5.
74. *Id.*
75. *Id.*
76. *See Form W-2G*, *supra* note 72, at 5.
77. *Instructions for Forms W-2G and 5754*, *supra* note 72, at 3.
78. *Id*.
79. *See infra* Part IV.A.
80. *Instructions for Forms W-2G and 5754*, *supra* note 72, at 3.
81. *Id.*

Just as the IRS considers annuity payments ordinary income for tax purposes, the IRS also considers proceeds of a sale of the right to the annuity payments as income.[82] As previously discussed, Texas lottery winners who elect to receive their winnings as annuity payments may assign their rights of payment.[83] Thus, it is important to consider how selling these rights may affect a winner's federal income tax, as illustrated in *Wommack v. Commissioner*.[84]

In *Wommack*, a Florida lottery winner sold her right to receive her lottery payments.[85] The winner reported the proceeds as a "sale of a long term capital asset."[86] Consequently, the IRS sent the winner a notice of deficiency citing failure to report the sale as ordinary income.[87]

The Eleventh Circuit held that the proceeds of the sale, as a lump-sum payment, are taxable as ordinary income because it was "'essentially a substitute for what would otherwise be received at a future time as ordinary income.'"[88] Four other circuit courts also have held that the proceeds from the sale of lottery rights are ordinary income and not capital assets.[89]

Estate planners with clients who want to sell their rights to receive lottery annuity payments for liquidity purposes must treat these proceeds as ordinary income at the outset and not as a sale of a long-term capital asset.[90]

IV. Initial Estate Preparation Issues Before Accepting the Prize

For lottery winners, the estate planning process must take place before the prize money is accepted.[91] Estate planning professionals must consider the following factors: the disbursement of the winnings; the number of winners if the winning ticket was part of a lottery pool; and the preservation of anonymity for the clients' own protection from those that would seek to harm them.[92]

82. Wommack v. Comm'r, 510 F.3d 1295, 1307 (11th Cir. 2007).
83. *See supra* Part II.B.
84. *See Wommack*, 510 F.3d at 1298.
85. *Id.* at 1297–98.
86. *Id.* at 1298.
87. *Id.* at 1298 n.3 (explaining that the tax rate for capital gains for assets held for one year was set at a lower 20% than the 39.6% tax rate for ordinary income).
88. *See id.* at 1299 (quoting Comm'r v. P.G. Lake, Inc., 356 U.S. 260, 265 (1958)).
89. *See id.* (citing Prebola v. Comm'r, 482 F.3d 610 (2d Cir. 2007); Watkins v. Comm'r, 447 F.3d 1269 (10th Cir. 2006); Lattera v. Comm'r, 437 F.3d 399 (3d Cir. 2006); United States v. Maginnis, 356 F.3d 1179 (9th Cir. 2004)).
90. *See id.* at 1307.
91. *See infra* Part IV.A–C.
92. *See infra* Part IV.A–B.

A. Disbursement of the Winnings

At the bottom of any lottery ticket, players must elect whether they want to receive a lump sum or a series of annuity payments.[93] As previously noted, the IRS requires the winners to report the lump-sum payment or annuity payments received over a ten-year period or more as ordinary income.[94] Although an annuity would provide the benefit of greater control over a smaller amount of money than receiving the whole amount, a lump-sum payment would generally impart greater advantages; a lump sum would provide greater control of investment, greater liquidity of funds in case of emergency, and would allow for the client to more easily minimize estate taxes.[95]

B. The Issue of Multiple Ownership of the Winning Ticket

The multiple ownership problem usually manifests itself when the client was part of a lottery pool among friends or coworkers in which one of the tickets in the pool had the winning numbers.[96] Estate planning professionals must determine whether a partnership relationship existed when the ticket was purchased and, if so, whether the ticket "was purchased on behalf of the partnership."[97]

In *Domingo v. Mitchell*, the parties made an arrangement in 2004 to pool their monetary resources to purchase tickets and to split any winnings.[98] During this time, Mitchell often purchased tickets before Domingo had reimbursed her for the purchase.[99] In March 2006, Mitchell joined a larger lottery pool consisting other coworkers.[100] This group was formed as a Texas limited partnership.[101] The new group encouraged Mitchell to invite others to join.[102] When Mitchell invited Domingo to join, "Mitchell offered to cover for her and be reimbursed at a later time."[103] However, Mitchell never informed the group that Domingo intended to join.[104] In late March, when the group held a meeting for its members to pay their respective shares, Domingo was not present.[105] Although Mitchell paid her share, she made no payment on behalf of Domingo

93. Gerry W. Beyer, *Lottery Players and Winners: Estate Planning for the Optimistic and the Lucky*, PROFESSOR GERRY W. BEYER (2000), http://www.professorbeyer.com/Archive/new_site/ Articles/Lottery.html/.

94. *See supra* Part III.B.

95. Beyer, *supra* note 93.

96. *Id.*

97. *Id.*

98. Domingo v. Mitchell, 257 S.W.3d 34, 36 (Tex. App.—Amarillo 2008, no pet.).

99. *Id.*

100. *Id.*

101. *Id.*

102. *Id.*

103. *Id.* at 37.

104. *Id.* at 36.

105. *Id.*

because she did not have enough money at the time.[106] In late April, the group won the lottery with one of the previously purchased tickets.[107] The group excluded Domingo from sharing in the winnings.[108] Domingo eventually sued both Mitchell and the group, as a partnership, for breach of contract.[109]

Mitchell argued that they never agreed upon the price and that Domingo violated an essential provision of the agreement by failing to provide numbers for the tickets.[110] The court rejected this argument by relying on previous case law that a reasonable price could be implied, especially given the fact that Domingo was an experienced lottery player who could reasonably estimate a price.[111] Additionally, because the numbers were subject to change during each of the meetings, the submission of the numbers itself could not have been in the contemplation of the parties to be an essential contractual element.[112]

Furthermore, Mitchell argued that the oral agreement is unenforceable because an agreement to cover for the debt of another falls under the Statute of Frauds and, therefore, should have been in writing.[113] The court also rejected this argument because Mitchell never told the group that Domingo was going to join so Domingo could not have had a debt with the group.[114] Therefore, "the agreement did not violate the Statute of Frauds."[115]

Ultimately, the court held that there was a genuine issue of material fact in that a valid agreement could be found with an exchange of promises as sufficient consideration: Mitchell's promise to pay Domingo's share in exchange for Domingo's promise to reimburse her.[116]

While it is recommended that friends or coworkers who participate in lottery pools form a partnership, it is imperative that there is clarity as to all the participants involved, what the rules are to partake in the winnings, and how the winnings will be divided if the group is fortunate.[117] This will prevent disputes and will allow for the partnership itself (not a single individual) to claim the winnings on behalf of the entire group.[118]

C. Lottery Winnings and Marital Community Property

In Texas, state law presumes that property acquired during the duration or dissolution of marriage is community property unless there is clear and

106. *Id.* at 37.
107. *Id.*
108. *See id.*
109. *See id.*
110. *See id.* at 40.
111. *See id.*
112. *See id.* at 41.
113. *See id.*
114. *See id.* at 42.
115. *Id.* at 37.
116. *See id.* at 41.
117. *See* Beyer, *supra* note 93.
118. *See id.*

convincing evidence that proves it to be separate property.[119] Generally, the winnings from a lottery ticket purchased using marital funds are subject to division under the presumption that the proceeds were community property.[120] In *Mayes v. Stewart*, the husband Bill Stewart, who was separated from his wife, bought a winning lottery ticket.[121] Initially, Mr. Stewart told his confidant, Ms. Mayes, that he wanted her to claim the ticket and collect the annuity payments to prevent sharing the prize with his wife.[122] After the divorce proceeding, Mr. Stewart told his former wife about the charade.[123] The former wife subsequently filed suit against Mr. Stewart and Ms. Mayes.[124] The case cited here only involves the appeal of the claim between the former wife and Ms. Mayes.[125] The court upheld the former wife's right to sue a third party "for the fraudulent conveyance of community property" based on the fact, as determined by the trial court, that Mr. Stewart had indeed bought the lottery ticket with martial funds.[126]

Considering the marriage and the pooling situation described above, the facts and circumstances surrounding the purchase of the ticket—including the intent and understanding of each party—play a pivotal role in determining the legal rights of all of the parties.[127]

D. Privacy Considerations

The downfall of most lottery winners is the lack of anonymity that accompanies the collection of the prize.[128] The publicity may present its own dangers to the winners—William Post from Pennsylvania whose brother tried to murder him for the inheritance is one illustration.[129] Other stories involve relatives or friends asking the winner for money or for investment in failing businesses.[130] Although in the latter case the winner can refuse to help, it is preferable for lottery winners to remain anonymous regarding their good fortune.[131]

Publicity through the media is not the only way anonymity may be compromised.[132] A dramatic and public change in the winner's own spending habits may also alert relatives and the local community to suspect the winner's

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119. TEX. FAM. CODE ANN. § 3.002(a)–(b) (West 2006).
120. *See* Mayes v. Stewart, 11 S.W.3d 440, 447–48 (Tex. App.—Houston [14th Dist.] 2000, pet. denied).
121. *Id.* at 446.
122. *Id.*
123. *Id.*
124. *Id.*
125. *Id.* at 447.
126. *Id.*
127. *See* discussion *supra* Part IV.B; *Stewart*, 11 S.W.3d at 447–48.
128. *See supra* Part I; *7 Lotto Winners Who Lost It All*, *supra* note 3.
129. *See supra* Part I; *7 Lotto Winners Who Lost It All*, *supra* note 3.
130. *See 7 Lotto Winners Who Lost It All*, *supra* note 3.
131. *See supra* Part I; *7 Lotto Winners Who Lost It All*, *supra* note 3.
132. *See 7 Lotto Winners Who Lost It All*, *supra* note 3.

fortune, forcing winners to isolate themselves socially.[133] Without implementing estate-planning vehicles that would curb spending habits (e.g., a spendthrift trust), the estate planner should advise the new lottery winner to resist the urge to dramatically uproot himself to an upscale house and neighborhood.[134] The temptation is great for the winners because they have no previous ties to the fortune, as opposed to self-made millionaires who care a great deal because they worked for their wealth.[135] However, some lottery winners have successfully resisted the temptation.[136] In Maine, Pat and Erwin Wales established a nonprofit after winning $73.7 million and kept a low profile; in doing so, they avoided media attention.[137] Planning how to manage the money and obtaining an estate plan is important for the lottery winner.[138]

V. ESTATE PLANNING DURING THE LIFE OF THE WINNER

While achieving the objectives of the lottery winner is imperative, there are several features of particular importance to the winners given their circumstances when receiving the winnings as well as the amount of money involved.[139] Among some of the considerations is anonymity, spending behavior, and tax savings.[140]

A. Trusts as an Entity for Prize Acceptance

In Texas, an estate planner may create trusts by the following methods:

> [A] property owner's declaration that the owner holds the property as trustee for another person; . . . a property owner's inter vivos transfer of the property to another person as trustee for the transferor or a third person; . . . [or] an appointment under a power of appointment to another person as trustee for the donee of the power or for a third person . . . .[141]

The Texas Government Code states that lottery winners may use a trust to accept the winnings on behalf of its beneficiaries.[142] The estate planning professional may consider several types of funded revocable trusts and their

133. *See* Jessica T. Lee, *Windfall Not Always a Blessing Psychologists Say*, BOS. GLOBE (July 10, 2004), http://www.boston.com/yourlife/health/mental/articles/2004/07/10/windfall_not_always_a_blessing_psychologists_say/.
134. *Id.*
135. *Id.*
136. *See id.*
137. *Id.*
138. *See id.*
139. *See* discussion *infra* Part V.A.
140. *See* discussion *infra* Part V.A.
141. TEX. PROP. CODE ANN. § 112.001 (West 2006).
142. *See generally supra* Part II.A (discussing that a lottery winner can accept the prize as any legal entity, including a trust).

features in order to achieve the desirable objectives mentioned above.[143] While it is not possible to account for all the tools available at the estate planner's disposal, as each lottery winner will have unique circumstances and unique objectives, this comment will discuss the following entities: blind trusts, spendthrift trusts, and grantor retained annuity trusts.[144]

1. Blind Trusts

A blind trust is one in which a trustee manages property without the disclosure of the names of the beneficiaries or without identifying the trust.[145] While politicians have used blind trusts to avoid conflicts of interests when directing public funds to the private sector, lottery winners have considered the use of these vehicles as well.[146] The trustee cannot use trust property "to satisfy the personal obligations of the trustee" because the law places the trustee in a fiduciary relationship.[147]

The difference between blind trusts and other trusts is that settlors, who are likely to become the beneficiary in the lottery winner scenario, give up the right to manage their own money.[148] For the more extreme case, in which lottery winners cannot manage their money whatsoever, this may be the preferred option because it would put the most distance between the prize and the beneficiary.[149] This distance can also serve as a legal shield for lottery winners against any impropriety on the part of the trustees (e.g., insider trading).[150]

While there is some misconception that only a blind trust may protect the identity of the winner when she claims the prize, any other trust entity, partnership, or corporation may claim the prize under its name to conceal the winner's identity.[151] Although a blind trust is another vehicle for an estate planner to consider, it is an extreme measure to fit a unique type of client.[152]

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143. *See infra* Part V.A.1–3.
144. *See infra* Part V.A.1–3.
145. *See* 1 JAMES N. JOHNSON, TEXAS PRACTICE GUIDE: REAL ESTATE TRANSACTIONS § 8:103 (2012).
146. Anne VanderMey & Nicolas Rapp, *Who Needs a Blind Trust?*, CNN MONEY (Oct. 22, 2012), http://finance.fortune.cnn.com/2012/10/22/blind-trust-mitt-romney; *see* David Carnes*, How Does a Blind Trust Work for Lottery Winners?*, LEGALZOOM, http://info.legalzoom.com/blind-trust-work-lottery-winners-20115.html (last visited Sept. 6, 2014).
147. TEX. PROP. CODE ANN. § 114.0821 (West 2006).
148. *See* VanderMey & Rapp, *supra* note 146.
149. *See id.*
150. *See id.*
151. *See, e.g.*, Carol Christian, *Trust Keeps $24 Million Jackpot Winner Anonymous*, HOUS. CHRON. (Sept. 7, 2012), http://www.chron.com/news/houston-texas/article/Trust-keeps-24-million-jackpot-winner-anonymous-3848371.php. *But see* Carnes, *supra* note 146.
152. *See* VanderMey & Rapp, *supra* note 146.

2. Spendthrift Trusts

A tremendous amount of money received at one time can easily tempt lottery winners to spend lavishly, especially on bad investments and gambling.[153] At times, estate planners have to confront the painstaking reality that it may be necessary to protect these clients from themselves to preserve financial wealth for the long term.[154]

Under the Texas Property Code, a spendthrift trust prohibits the transfer of a beneficiary's interest—either in income or the corpus—before the trustee delivers the interest.[155] Compared to blind trusts, the spendthrift trust does not maintain the distance between the trustee and the beneficiary and is not as costly to upkeep.[156] Lottery winners who have some competency to manage some money may utilize the spendthrift trust while the trustees figuratively control the spigot.[157]

As there are stories of many previous lottery winners who had spent their way into poverty in a few years after collecting the prize money, the estate planner should consider this tool as it would help clients control their spending habits and ultimately preserve the wealth gained for long-term goals and future generations.[158]

3. Grantor Retained Annuity Trusts

One of the ways that an estate planner may preserve a client's assets is to incorporate the features of a Grantor Retained Annuity Trust (GRAT) in the event that a winner elects to receive the lottery winning as an annuity.[159] For this type of trust, the donor retains the right to annuity payments from the trust while at the same time contributing funds to the trust (in the form of lottery annuity payments in this case).[160] Depending on the length of the GRAT, the trust property may be an appreciating investment.[161] The annuity payments from the trust to the beneficiary are adjusted so that the present value of the payments equals the value of the contributions.[162] This serves to minimize the taxable gift value calculated using a tax hurdle rate determined by section 7520

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153. *See* Deborah L. Jacobs, *Winning the Lottery Isn't Always a Happy Ending*, FORBES (Nov. 28, 2012), http://www.forbes.com/sites/deborahljacobs/ 2012/11/28/winning-the-lottery-isnt-always-a-happy-ending/.

154. *See id.*

155. TEX. PROP. CODE ANN. § 112.035(a) (West 2006).

156. *See* VanderMey & Rapp, *supra* note 146.

157. *See* PROP. § 112.035(a).

158. *See 7 Lotto Winners Who Lost It All*, *supra* note 3.

159. *See* Mark R. Parthemer, *Shelf GRATs: Protect Against Rising Rates and Adverse Tax Law Changes*, 27 PROB. & PROP. 52, 52–53 (May/June 2013).

160. *Id.*

161. *Id.* (explaining that more volatile assets, like stocks, ought to be an investment suitable for a short-term GRAT while long-term instruments, like bonds, are more appropriate for a long-term GRAT).

162. *Id.*

of the Internal Revenue Code.[163] After the completion of the GRAT term, the beneficiaries receive the remaining assets.[164]

Some of the risks associated with using a GRAT are that the hurdle rate will dramatically increase in the coming years and that the law may prohibit short-term GRATs.[165] The use of a Shelf GRAT, which is an intermediary or long-term GRAT created and funded at the point of creation but activated at some later point in time, can mitigate the risks described above.[166]

While this solution may be appropriate for lottery winners who want to save in terms of taxes, it is not for everyone and probably is more suited to investment-savvy individuals.[167] Unsophisticated clients may not understand it and others may prefer keeping their capital liquid for the short term, as the Shelf GRAT would only activate after a specified number of years (e.g., four years to eight years).[168] Research as to the types of investments suitable for the GRAT, as well as to the formulation of a plan to take advantage of the low hurdle rate, is necessary so that the estate planner and the lottery winner can comfortably make a decision as to whether to move forward or not.[169]

B. Tax Liability Concerns

The primary method for an estate planner to preserve the financial wealth of the estate for the life of the lottery winner is to employ tax-saving measures with respect to income, gift, and estate taxes.[170] Of course, an estate planner can implement these measures while serving the client's stated objectives for the estate plan.[171]

1. Income Tax Liability

As previously discussed, the IRS treats lottery winnings as taxable income.[172] Because most lottery winners report taxes on a cash basis, both lump-sum payments and annuity payments are reported as part of gross income in the calendar year in which winners actually receive them.[173] If winners receive the prize on an annuity basis, conventional tax saving measures, such as an itemized deductions over the standard deduction and taking advantage of tax credits, will suffice so long as there is an accurate accounting that can justify

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163. *Id.*
164. *See* Parthemer, *supra* note 159, at 52.
165. *Id.* at 53–54.
166. *Id.* at 54.
167. *See id.* at 55.
168. *Id.*
169. *See id.*
170. WEINSTOCK & NEUMANN, *supra* note 19, § 1.4.
171. *Id.*
172. Beyer, *supra* note 93; *see* discussion *supra* Part III.B.
173. Beyer, *supra* note 93.

the use of these tools to the IRS.[174] Winners electing the lump-sum payment must not only use the conventional saving measures described, but they may also consider deductible intraspousal gifts, described below.[175]

2. *Gift Tax Liability*

If a client wishes to make a gift, the estate planner should consider several methods when forming the estate plan: annual exclusion gifts, qualified transfers, intraspousal gifts, and charitable gifts.[176]

a. *Annual Exclusion Gifts*

Generally, the tax exclusion amount for making a gift is $10,000 adjusted by the cost of living.[177] For 2013, the adjusted exclusion rate was $14,000.[178] In order to take full advantage of the exclusion and minimize gift taxes, a lottery winner, in accordance with the winner's unique comprehensive estate plan and wishes, would be well advised to plan gifts every year to trusted family and friends.[179]

b. *Qualified Transfers*

As stated in the Internal Revenue Code, "Any qualified transfer shall not be treated as a transfer of property by gift . . . ."[180] In other words, if the client pays money on behalf of another person then the IRS will consider the transaction as a qualified transfer rather than a gift.[181] Examples of these transactions include the following: "as tuition to an educational organization . . . for the education or training of such individual, or . . . to any person who provides medical care . . . with respect to such individual as payment for such medical care."[182] In addition to the $14,000 exclusion rate for a normal gift, the qualified transfer is available as its own exclusion.[183] The IRS permits these transfers regardless of the donor-donee relationship.[184] As with any estate plan,

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174. *See id.*
175. *See infra* Part V.B.2.c.
176. *See infra* Part V.B.2.a–d.
177. I.R.C. § 2503(b) (2012 & Supp. I 2013).
178. *In 2013, Various Tax Benefits Increase Due to Inflation Adjustments*, IRS (Oct. 18, 2012), http://www.irs.gov/uac/2013-Inflation-Adjustments-to-Various-Tax-Benefits; *see* I.R.C. §§ 1(f)(3), 2503(b) (2012 & Supp. I 2013).
179. *See* discussion *supra* Part I.
180. I.R.C. § 2503(e)(1).
181. *Id.* § 2503(e)(2).
182. *Id.*
183. Treas. Reg. § 25.2503-6(a) (1984).
184. *Id.*

the estate planning professional should consider these sorts of tax-saving qualified transfers in accordance with the client's objective.[185]

For the education aspect of the transfer, the IRS provides an unlimited exclusion if the gift is for "tuition expenses of full-time or part-time students paid directly to the qualifying educational organization providing the education."[186] However, the qualified transfer exclusion does not apply "for amounts paid for books, supplies, dormitory fees, board, or other similar expenses which do not constitute direct tuition costs."[187]

For medical expenses, the unlimited exclusion applies to amounts paid on behalf of any individual with respect to receiving medical care or for medical insurance, unless the medical care is being reimbursed by the donee's insurance.[188]

This unlimited exclusion amount from qualified transfers is a valuable tool to use for lottery winners to gain considerable deductions, especially for those electing a lump-sum payment.[189]

c. Intraspousal Gift

The IRS treats a gift transfer to a spouse as a taxable deduction equal to "an amount with respect to such interest equal to its value."[190] However, the estate planner must be aware that certain intraspousal transfers in the form of certain terminable interests may not be deductible.[191] Specifically, transfers of interests to the spouse that terminate on some event or contingency and revert back to the donor or transfers to another person will not be tax deductible.[192] The IRS allows the donor to deduct the value of a terminable interest when it is in the form of a joint interest—in situations where the spouse is a sole joint tenant with the donor or in the form of a life estate where the donee spouse is given the sole power of appointment.[193] Generally, the donor should not retain any interest in any property given to a spouse in order to take advantage of the intraspousal gift tax deduction.[194]

d. Charitable Gifts

In computing the income tax, deductions are allowed for gift contributions made to "a corporation, or trust . . . or foundation, organized and operated

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185. WEINSTOCK & NEUMANN, *supra* note 19, § 1.4.
186. Treas. Reg. § 25.2503-6(b)(2).
187. *Id.*
188. *Id.* § 25.2503-6(b)(3).
189. *See supra* Part V.B.2.b.
190. I.R.C. § 2523(a) (2012 & Supp. I 2013).
191. *Id.* § 2523(b).
192. *Id.*
193. *Id.* § 2523(d)–(e).
194. Treas. Reg. § 25.2523(b)-1 (as amended in 1994).

exclusively for religious, charitable, scientific, literary, or educational purposes."[195] As with any unique estate plan and objectives, the client should plan annual gift contributions to take advantage of these tax savings if he or she elects to take the annuity payments.[196] For lottery winners with adjusted gross incomes over $150,000 ($300,000 for married couples filing jointly), the IRS generally limits itemized deductions, including deductions taken for charitable contributions.[197]

e. Generation-Skipping Transfer Taxes

The IRS deems certain gift transfers as subject to the GST tax.[198] This is especially important if the winner is considering receiving and managing the prize in the form of a trust because this tax reaches certain types of transfers from a trust.[199] Basically, the IRS imposes the GST tax on both inter vivos and testamentary transfers to an individual that is two or more generations below that of the decedent or the donor.[200] The Internal Revenue Code defines GST, with respect to the interest of the property, as either a taxable termination to a "skip person," a taxable distribution to a skip person, or a "direct skip."[201] The IRS considers a skip person either of the following:

> [A] natural person assigned to a generation which is 2 or more generations below the generation assignment of the transferor, [a skip person,] or . . . a trust—(A) if all interests in such trust are held by skip persons, or (B) if—(i) there is no person holding an interest in such trust, and (ii) at no time after such transfer may a distribution (including distributions on termination) be made from such trust to a nonskip person.[202]

A direct skip is defined as a gift or any other termination subject to estate tax provisions to a skip person.[203] Trustees pay taxable terminations while transferees pay taxable distributions.[204] The transferor is liable to pay the GST tax in the case of a direct skip.[205] What the IRS may deem a GST does not include qualified transfers related to medical or educational purposes.[206]

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195. I.R.C. § 2522(a)(2) (2012 & Supp. I 2013).
196. Beyer, *supra* note 93.
197. *2013 Instructions for Schedule A (Form 1040)*, IRS A-1 (2013), http://www.irs.gov/pub/irs-pdf/i1040sca.pdf.
198. Beyer, *supra* note 93.
199. 1 RONALD R. CRESSWELL ET AL., TEXAS PRACTICE GUIDE: WILLS, TRUSTS AND ESTATE PLANNING § 4:251 (2013).
200. *Id.*
201. I.R.C. §§ 2611(a), 2612(a)–(b) (2012 & Supp. I 2013).
202. *Id.* § 2613(a).
203. *See id.* § 2612(c)(1).
204. *Id.* § 2603(1)–(2).
205. *Id.* § 2603(3).
206. *Id.* § 2611(b)(1).

The applicable rate used to calculate the actual GST tax is a "product of the maximum Federal estate tax rate — 40 % — and the inclusion ratio of the transfer" determined by section 2642 of the Internal Revenue Code.[207] Generally, for both direct skips and taxable distributions, the taxable amount is equal to the value of the property the transferee receives.[208] The taxable amount for taxable distributions is the value of the property that has been subject to the termination minus certain deductions allowed by section 2053 of the Internal Revenue Code.[209]

The total amount of the GST tax is equal to the taxable amount multiplied by the applicable rate.[210] However, the GST exemption amount is actually the unified basic exclusion amount for the estate and gift tax, which was $5.25 million in 2013.[211] The taxpayer may allocate the exemption to a transfer under the GST tax at any time from the date of the transfer to the time a federal estate tax return is filed.[212] For property held in trust, the taxpayer may allocate the exemption to the entire trust and not specifically to certain trust assets.[213] Depending on the client, the estate planner would have to carefully plan the most effective way to utilize the GST exemption allocation, especially if the client considered a gift to grandchildren or great-grandchildren.[214]

3. Estate Tax Liability

If the estate planner is successful in preserving the wealth of the lottery winner until death, the lottery winner will inevitably confront the payment of the estate tax.[215] The lump-sum payment election is strongly recommended for spendthrift protection, emergency liquidity needs, and the ability to pay estate taxes.[216] Effective control of the estate tax liability requires special attention to executing a will, purchasing of life insurance, and taking advantage of the deductions of charitable gifts.[217]

a. Will Execution

During the life of the winner, it is imperative that the estate planner, while fulfilling both the client's objectives and preserving the client's wealth, plans in advance how to maximize at-death deductions.[218] Part of the planning will

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207. *Id.* §§ 2001, 2641(a), 2642.
208. *See id.* §§ 2621, 2623.
209. *See id.* §§ 2622(a)–(b), 2053.
210. *Id.* § 2602.
211. *See id.* §§ 2001(c), 2631(c).
212. *See* Treas. Reg. § 26.2632-1 (as amended in 2005).
213. *Id.*
214. *See* CRESSWELL, *supra* note 199, § 4:251.
215. *See* Beyer, *supra* note 93.
216. *See id.*
217. *See infra* Part V.B.3.a–c.
218. *See* Beyer, *supra* note 93.

involve choosing how to use the deductions with respect to charitable gifts that will be discussed later.[219] Also, the estate planner may want to take advantage of the at-death marital deductions.[220] The estate may be deducted if the property interest is passed to the surviving spouse as part of the decedent's gross estate; not being passed to a surviving spouse to satisfy a claim of the spouse against the estate (such as paying off a debt); is not subject to a loss deductible from a devaluation in property value; and if it is not a terminable interest that may pass to a third person upon some event.[221] The estate planner may control the distribution of property to effectively minimize estate tax liability.[222]

b. Purchase of Life Insurance

While most clients may think of life insurance as a means of income in the event their loved one dies, it is also a means to pay the estate tax due upon termination of the estate.[223] Ideally, obtaining life insurance is an integral part of the estate plan, particularly for a nonliquid estate not able to pay the estate tax on its own.[224] The IRS will not include the proceeds from the life insurance in gross income for income tax purposes "if such amounts are paid by reason of the death of the insured."[225] Additionally, if the policy is placed in an irrevocable life insurance trust or if clients divest themselves of all "incidents of ownership" of the policy, the IRS will not include the proceeds in the gross estate for estate tax calculations.[226]

c. Charitable Gifts

Similar to gift taxes, the IRS considers testamentary charitable gifts as a deduction to the gross estate when calculating the estate tax.[227] Before the death of the winner, the estate planner must help the client determine not only what charities or foundations will receive the gift, but more importantly for minimizing the estate tax, the size of the gift.[228]

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219. *See infra* Part V.B.3.c.
220. Beyer, *supra* note 93.
221. Treas. Reg. § 20.2056(a)-2 (as amended in 1994).
222. Beyer, *supra* note 93.
223. *Id.*
224. WEINSTOCK & NEUMANN, *supra* note 19, § 1.6.
225. I.R.C. § 101(a)(1) (2012 & Supp. 1 2013).
226. *Id.* § 2042(a)–(b); Beyer, *supra* note 93.
227. I.R.C. § 2055 (2012 & Supp. I 2013).
228. *See* Beyer, *supra* note 93.

VI. CONCLUSION

Ultimately, an optimal estate plan that will preserve the lottery capital gained, as well as maintain it without incident, will involve a multifaceted approach that includes how to claim the lottery prize, how to set a clear agreement among multiple claimants, how to minimize income and estate taxes, and how to best limit the public exposure to the winner.[229] Estate planners can accomplish these goals by the formation of the correct entity for the client, which the client will use to receive and preserve the prize money for as long as possible until the death of the winner and possibly for future generations.[230] Every client will be different in fact and circumstance, and each will require a unique solution.[231] What may be optimal for one client may be inefficient for another.[232] However, all winners should consult with an estate planning attorney before claiming the prize and have a 180-day window in which to do so.[233]

Without any sort of estate planning, what may begin as an exciting thrill for a lottery winner can easily turn into a horrific nightmare.[234] Although this article recommends a general plan that maximizes tax savings, provides anonymity, and preserves financial wealth for as long as possible, estate planners need to keep in mind any client objectives that may require them to deviate from this proposed plan.[235] For example, a family saving for their child's future college education, depending on the child's age and school grade level, must necessarily have some liquidity concerns and, therefore, would have some reservations in pursuing a Shelf GRAT.[236]

As the beginning of this comment mentioned, the purpose of this writing is to inform estate planning professionals of the many issues that must be considered and to serve as a guide in the planning of the winner's estate throughout his or her lifetime.[237] By planning for the future, lottery winners will avoid the pitfalls of sudden wealth and continue to live fulfilling lives.[238]

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229. *See id.*
230. *See supra* Parts II–V.
231. *See* WEINSTOCK & NEUMANN, *supra* note 19, § 1.2.
232. *See id.*
233. *See supra* Part II.A.
234. *See supra* Part I; *7 Lotto Winners Who Lost It All*, *supra* note 3.
235. *See* WEINSTOCK & NEUMANN, *supra* note 19, § 1.2.
236. *See supra* Part V.A.3.
237. *See supra* Part I.
238. *See supra* Part I.