
SEWARD & KISSEL LLP

# Family Office Considerations for 2020

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David R. Mulle, Partner (mulle@sewkis.com)

Scott M. Sambur, Partner (sambur@sewkis.com)

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# Hot Topics and Other Considerations

- Planning around the Virus and the Election
- Family Office Structure to Save Taxes
- SECURE Act
- Private Placement Life Insurance

# Planning Around the Virus and the Election

- Low stock and business valuations create opportunities for transferring wealth.
- Significant tax changes possible if a Democratic win.
- Current personal income and estate tax laws slated to sunset in 2026.
- Democratic sweep of the Presidency and Congress could result in an early change to the laws – as early as 2021.
- Will want to plan by the end of 2020, and sooner to take advantage of low values.

# Biden's Tax Policy

- Raise top rate to 39.6%
- Tax capital gains as ordinary income if income > $1 million
- End stepped-up basis rule
- Cap deductions for the wealthy
- Possible $3.5 million estate tax exemption

# Planning Options Before Year-End

- Use up remaining estate tax exemption ($23.16M for a married couple)
  - Gifts to dynasty trusts

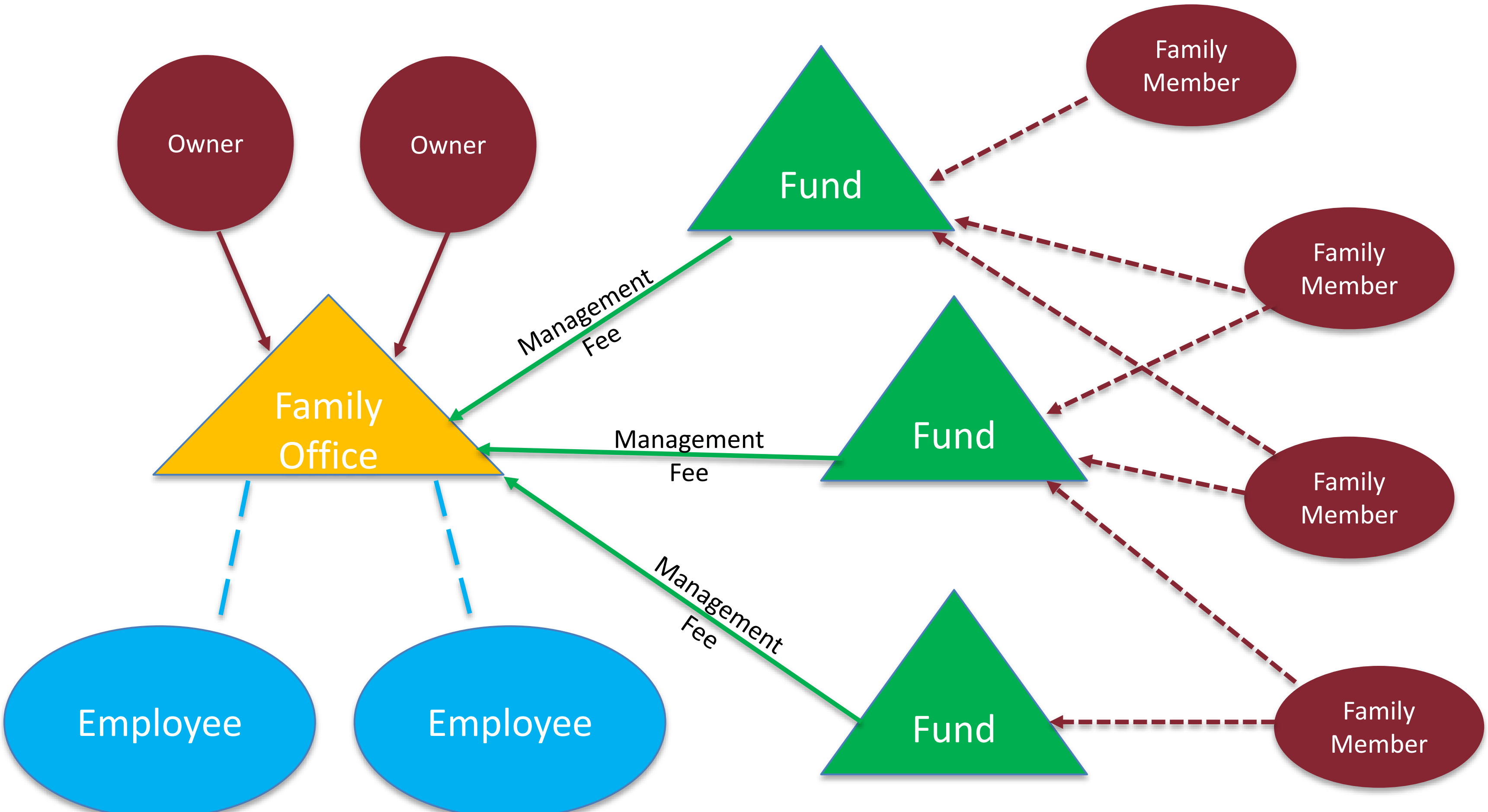
- Grantor-Retained Annuity Trusts (GRATs)

- Sales to trusts

- Spousal Limited Access Trusts (SLATs)

- If living in NJ, consider setting up an ING Trust

# Family Office Structuring: Old Structure



# Problems with Old Family Office Structure

- Management fees payable by the Funds were previously deductible as miscellaneous itemized deductions, subject to 2% floor
  - No longer deductible
- Family offices that did not qualify as a trade or business were able to deduct  expenses as miscellaneous itemized deductions, subject to 2% floor
  - No longer deductible
- Result: potential double taxation – the Funds pay management fees that can’t be deducted, which is income to the family office, which cannot deduct its expenses

# Family Office Structuring Ideas

- Pooled investment vehicles ("Funds") pay incentive allocation instead of management fee
    - Incentive allocations are not considered a deduction, but are instead an income shift
    - But be mindful of new carried interest rules
    - Issues with down years
        - Beneficial if family office is owned by dynasty trust

- Attempt to treat family office as trade or business
    - Expenses of a legitimate trade or business are generally deductible
    - Owned and managed by someone other than wealth creator
    - Perhaps owned by non-grantor dynasty trust
        - Substantial wealth transfer opportunities with this structure

# Family Office Structuring Ideas (cont'd)

- Consider structuring as a corporation
  - Expenses of a corporation are generally deductible
  - Best to keep income low

- Consider paying family office employees as special limited partners of Funds
  - Sidesteps issue of the family office having to be a trade or business
  - Complicated to administer

- Use family office structure to deduct third-party manager fees
  - Reimbursement to pooled investment vehicle

# SECURE Act

- Required Minimum Distribution starting age increased from 70.5 to 72.

- 10-year limit for most inherited IRAs
  - Surviving spouses, minor children and disabled beneficiaries have different rules

- Deathbed Roth conversions
  - Particularly effective in NY and other states with an estate tax

# Private Placement Life Insurance

- What is PPLI?
  - Tax-free insurance wrapper around an investment portfolio
  - Low fees
  - Not just tax deferral, but tax avoidance!

- Growth of Insurance-Dedicated Funds



# David R. Mullé

**Partner**
Seward & Kissel LLP
One Battery Park Plaza
New York , NY 10004
T. 212-574-1452
F. 212-480-8421
E. mulle@sewkis.com

David R. Mullé is a partner in the Investment Management Group at Seward & Kissel LLP. David works with sponsors and managers of various private investment funds and other pooled investment vehicles, including hedge funds, funds of funds, commodity pools, private equity funds and various "hybrid" funds. In particular, David focuses on fund formation and structuring, the offering of interests by private investment funds, and the negotiation and documentation of such investments.

David has significant experience working closely with investment managers to formulate their goals in unlocking shareholder value and designing legal strategies to achieve those goals. He also focuses on regulatory filings required under Sections 13(d) and 16 of the Exchange Act of 1934, as amended, including potential short-swing profit issues.

David organizes both domestic and offshore partnerships and other investment vehicles, including separately managed accounts. He also represents fund sponsors in connection with seed-capital investments and represents funds of funds, family offices and other institutional investors in connection with their investments in private funds. David regularly counsels investment advisers, commodity pool operators, commodity trading advisers and family offices on regulatory and compliance matters, including registration requirements and available exemptions, the development of comprehensive compliance programs and regulatory examinations.

David received a B.A. and an M.A. from The Johns Hopkins University and J.D. from the University of Michigan.



# Scott M. Sambur

**Partner**
Seward & Kissel LLP
One Battery Park Plaza
New York , NY 10004
T. 212-574-1445
F. 212-480-8421
E. sambur@sewkis.com

Scott Sambur is a partner in the Trusts & Estates Group. Scott represents fiduciaries and individuals with substantial net worth throughout the full range of estate and transfer-tax planning and administration, focusing on the transfer of assets to beneficiaries at the lowest tax cost while achieving overall family and charitable objectives. He advises clients on tax-effective strategies to shift both future wealth and existing wealth, using sophisticated trust planning, family investment vehicles, life insurance and charitable giving. Scott works closely with members of the taxation, investment management and maritime groups at Seward & Kissel to craft comprehensive solutions addressing clients' family and business planning objectives.

Scott advises clients on techniques for charitable giving, including the establishment and administration of charitable foundations, while helping clients to navigate the complicated rules governing the directors and officers of private foundations. He has worked with numerous clients to set up charitable split-interest trusts, helping the charitably-inclined to give large sums to worthy causes while at the same time transferring considerable wealth to members of their families on a tax-advantaged basis.

Scott is experienced with the complicated laws governing non-resident aliens who own assets in the United States or have U.S. family members, as well as U.S. citizens owning foreign assets, holding dual citizenship, residing abroad or considering expatriation. He has advised multiple clients on complex offshore business succession and estate planning matters, and is well-versed in the many rules governing foreign trusts with U.S. beneficiaries.

Scott received an A.B. from Harvard College and a J.D. from Harvard Law School, and he served as a law clerk to the Honorable Bruce A. Markell, of the United States Bankruptcy Court, District of Nevada. He is currently a member of the New York City and State Bar Associations, the American Bar Association and the International Bar Association.


SEWARD & KISSEL LLP


One Battery Park Plaza
New York, NY 10004
212-574-1200
212-480-8421 (fax)

901 K Street, NW
Washington, DC 20001
202-737-8833
202-737-5184 (fax)

www.sewkis.com