Staying Ahead of Risk as Lifespans and Life Complexity Expand

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The risk management landscape for high-net-worth families and individuals is evolving rapidly. The continually changing needs and demands of the affluent demographic are leading to an equally demanding need for specialized insurance coverage that provides comprehensive protection for valuable assets, property, and lifestyle.

Adding to the complexity is a world that has grown ever more perilous. Unpredictable and more extreme weather, inflationary pressures, and new and changing risk exposures presented by multifaceted lifestyles mean that advisors must be hyper-focused on risk management and mitigation.

Liability exposures for high-net-worth clients grow in number and complexity due to their lifestyle and significant holdings. Specialized policies, including high-value home insurance, coverage for private collections, and excess liability insurance, are in high demand among high-net-worth clients. Additionally, advisors often are constructing policies that include enhanced benefits such as concierge services, identity theft protection, and coverage for drivers and domestic staff.

These trends translate into big bucks. For example, recent inflation has driven increases for repairing damage to homes and infrastructure. Large settlements are being issued more frequently and for more types of incidents. Settlements today may reach into the mid-seven figures and can be based on myriad unforeseen circumstances. As a result, there is a growing demand for insurance policies that offer broader coverage, higher policy limits, and more flexible terms to adequately protect high-value assets.

A smart and well-tailored risk management plan is essential to help clients prepare for both the predictable and the unforeseen. By offering specialized policies, higher policy limits, and comprehensive protection, advisors strive to provide peace of mind and financial security for affluent clients. This article outlines the various risk management strategies that cover trusts, limited liability companies (LLCs), and retirement years. Using insurance policies, these tactics aim to protect high-net-worth clients and their assets now and into the future.

**SMART MANAGEMENT OF LLCs AND TRUSTS**

High-net-worth clients reap several benefits when they choose a trust or LLC to hold their homes, real estate investments, family business interests, fine art, valuable collectibles, and other assets. Through these legal entities, clients can reduce personal liability exposure and increase asset protection and tax efficiency. Additionally, future heirs can avoid probate if there are documented trust beneficiaries or LLC interest holders, which simplifies the transfer of assets.

Yet challenges still can crop up in these situations. Smart and careful management of trusts and LLCs are then key. For example, it is critical for insurance policies covering these assets to list the appropriate entity as the owner. Failure to do so could result in a claim being denied, putting assets at risk.

In some instances, clients have set up a laddered ownership structure for their assets, making for a complex situation. Laddered ownership is when a trust owns an LLC, which in turn may own one or more additional LLCs. The trust could be owned by another trust, raising questions as to which entity should be listed as the owner of an insurance policy. The general rule is that the trust or LLC that directly owns the assets should be recorded as the insurance policy owner. But what about when more than one LLC owns an asset such as a business? In any indirect ownership situation, a professional risk management expert should consult with a client’s attorney or other financial advisors in determining how to proceed.

Next, even when insurance policies are matched properly to their corresponding assets, challenges can arise when clients directly pay the insurance premiums or when they directly receive claims payments.

“Many clients think nothing of directly paying the premium for indirectly owned assets,” said Lisa Gelles, executive director, private risk, at Howard Insurance.
S T A Y I N G  A H E A D  O F  R I S K  A S  L I F E  S P A N S  A N D  L I F E  C O M P L E X I T Y  E X P A N D

“... can help a creditor pierce the veil of protection provided by a trust or LLC. The same result can come from the wrong individual or entity cashing a claim check.”

Generally, insurance on property held in a trust or LLC can be structured in two ways: (1) the trust or LLC could be the “named insured” on the policy, or (2) it can be the “additional insured” or the “additional interest” on the policy of the individual who places the assets in the entity. But the two options offer differing liability protections.

Making the trust or LLC the named insured on the policy creates more legal separation between the entity and the underlying beneficial owners (UBOs). If the entity pays the insurance premiums, this helps maintain that separation.

In the other situation, where the trust or LLC is the additional insured or additional interest on the policy with the UBO(s) as the named insured, the legal separation is not as secure. This could significantly weaken the asset protection attributes of the trust or LLC and expose the UBOs to personal liability.

MANAGING ADDITIONAL LIABILITIES
In some situations, clients with trusts and LLCs may need additional insurance.

“By transferring assets to a trust or LLC, additional insurance may be needed to mitigate liabilities entity ownership can create,” said Gelles. “For instance, if a client’s automobiles are owned by a trust or LLC and leased to the client, the client may need to buy separate car insurance. Similarly, if an entity has employees to manage property or to operate a company, proper coverage will be needed for employee liability exposures.”

If the trust or LLC holds a home or other property that is used for a commercial enterprise, the client will require commercial coverage. This could be a farm, ranch, or vineyard.

Many traditional insurance brokers are unfamiliar with these intricacies.

TRUSTEE AND LIABILITY EXPOSURE: NO GOOD DEED GOES UNPUNISHED
When clients form a trust, they often ask a family member or a friend to serve as a trustee for the entity, which was established to hold property for asset protection and/or estate planning purposes. Often, these family and friends feel honored to be asked for this “good deed,” which is a very important responsibility. Their job as professional trustee entails safeguarding a trust’s assets for beneficiaries while carrying out the wishes of the trust’s grantor for how assets are managed and used.

Unfortunately, being a trustee comes with potential downsides that expose trustees to considerable personal liability. Trustees should protect themselves in instances where grantors and beneficiaries accuse them of mismanaging assets, making accounting errors, performing unfair or improper distributions, failing to follow the terms of the trust agreement, or having a perceived conflict of interest.

To protect themselves, trustees can turn to a “Miscellaneous Professional Liability for Trustees” insurance policy, which can cover a trustee for actions brought on by a trust’s grantor and beneficiaries as well as from suits brought by trust creditors, charities, or government agencies acting on behalf of beneficiaries.

Trustees are treated differently than employees of professional service organizations, who typically escape personal liability because the organization protects them. This is not the case with trustees, who personally face actions for breach of trust. Carrying a liability policy to protect oneself becomes paramount for every trustee.

A trustee professional liability policy should be tailored to the unique exposures of trustees responsible for a variety of trusts, including:

- Living trusts (where the grantor is not the trustee)
- Liquidating trusts
- Receiverships
- Claims/insurance trusts
- Testamentary trusts
- Bankruptcy trusts

INSIDE A TRUSTEE PROFESSIONAL LIABILITY POLICY
Disagreements between trustees and other parties on a trust arrangement are quite common. Most are financial in nature, with grantors objecting to investment strategies or remainder beneficiaries objecting to principal distributions made to an income beneficiary. The scenarios that can result in a trustee being exposed to personal liability are seemingly endless, so it is important to understand what’s inside a trustee professional liability policy.

Common policy features include:

- Trustee is the “named insured.”
- No requirement that a trustee’s services are performed for a fee.
- Final adjudication and non-imputation of the conduct exclusions.
- Coverage for trustees’ employees in the provision of services for the trust.
- Definition of professional services addresses the exposures unique to trustees.
- Vicarious liability coverage for the selection of “outside professional services providers.”

LONG-TERM CARE AND IMPLICATIONS OF LIVING LONGER
In 2021, the average life expectancy for American women and men was 79 and 73, respectively, but those with U.S. household incomes in the top 1 percent can expect, on average, to live into their late 80s.
There is a real danger that people may outlive their individual retirement savings if they don’t plan properly for a likely increase in longevity and don’t consider long-term care needs. Risk management in estate planning must consider these factors as well as the economic volatility that certainly will occur during an increased lifespan.

For clients worried about such scenarios, long-term care insurance can alleviate the worry around the impact of aging-related expenses. Purchasing either a traditional long-term care policy or adding a rider to a cash-value life insurance policy provides funds to alleviate these concerns.

**MAKING THE MOST OF THE LAST 8,000 DAYS**

The Massachusetts Institute of Technology AgeLab, which has been studying aging for more than two decades, has broken up a person’s life-span into four blocks of 8,000 days. The final block covers the traditional retirement years.³

Researchers have found that those who get the most out of their last 8,000 days, which is roughly equal to 21 years, have a plan for this time and prepare for it logistically and financially.

Drawing from these AgeLab studies, clients should consider the following example questions that cover logistics during one’s retirement years:

- Where do you want to live in retirement?
- What kind of home will you want?
- If you want to travel, where do you want to go and for how long?
- Will you be contributing financial support to children and grandchildren?
- As you grow older, what types of independent living communities or assisted care housing will appeal to you?

Managing long-term care costs is critical for a population with a longer life-span. A century ago, when Americans either did not live until retirement or died shortly thereafter, they usually died after a brief illness. Today, affluent Americans are living decades longer, and medical advances have seen to it that most of these years are physically enjoyable. Those same medical advances, though, have contributed to “the long good-bye,” where physical decline can last years and result in soaring costs for increased levels of care. Perhaps of equal concern is becoming a burden to other family members who, absent other plans, must step up to serve as caregivers. In addition, although remaining in one’s own home as long as possible is desired, this may not be possible without the requisite resources.

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**LIFETIME INCOME QUESTIONS**

In the past, many retirees were fortunate to have pensions or other defined benefit plans that pay a lifetime income. But such employer-guaranteed income is practically nonexistent today. Restrictive defined contribution plans have taken their place. For newer retirees, individual retirement accounts and 401(k) plans, even fully funded, likely are inadequate to meet the financial needs of a post-work period that could last 30 years or more. It is impossible to determine what the balances of those qualified plans will be in the future and then how to best use those balances without outliving them.

The same is true of savings from other sources such as mutual funds, securities, or even the sale of a family business. Money can be set aside and invested, but no one can travel ahead to the future to see how much should be saved and how it should be invested. Essentially, Americans are stuck either underfunding their retirement income needs or overspending them by allocating unnecessary funds over the years.

**LIFE INSURANCE FOR HIGH-NETWORTH CLIENTS**

Life insurance often is overlooked as an alternative asset class for wealthy individuals, but it offers unique advantages and can play a significant role in a comprehensive wealth management strategy. By diversifying their portfolios and mitigating risks, high-net-worth clients can leverage life insurance as a valuable tool for wealth preservation and succession planning.

At its core, life insurance serves as a safeguard against unforeseen events, protecting the wealth of individuals and families. In the event of premature death, life insurance provides a tax-efficient lump-sum payout that can ensure the financial well-being of dependents and help maintain their standard of living. In
addition, clients may find life insurance to be a powerful planning tool for additional reasons such as:

**Tax advantages.** Life insurance policies often offer attractive tax benefits, making them an appealing asset class for wealthy individuals. Depending on the jurisdiction, policyholders may enjoy tax-deferred growth, tax-free death benefits, and potential estate-tax savings. The tax-efficient nature of these policies can make a valuable addition to a high-net-worth individual's portfolio.

**Creditor protection.** Life insurance can offer protection against creditors, shielding the policy's cash value and death benefit from potential claims. This aspect can be especially valuable as part of a comprehensive risk management strategy for high-net-worth individuals who may face higher exposure to liability risks.

**Business continuity.** For wealthy individuals who own businesses, life insurance can play a crucial role in ensuring business continuity and succession planning. By utilizing life insurance policies, business owners can provide funding for the seamless transfer of ownership and management upon their death, mitigating disruptions and preserving the value of the business.

**Charitable giving and philanthropy.** Life insurance can be utilized as a tool for charitable giving, allowing wealthy individuals to leave a legacy and support causes close to their hearts.

### PROTECTING LEGACIES VIA LIFE INSURANCE

At death, one's accumulated wealth can go to one of three places—the U.S. government, charity, or to chosen heirs. Unless nearly the entire estate is left to charity the Internal Revenue Service is due its portion—which can be up to a staggering 40 percent.8 This could erode the legacy intended for children and grandchildren. By establishing trusts and a plan for annual gifting for clients, some wealth transfer taxation can be mitigated. However, taxation is not the only concern for those planning for a longer lifespan.

By living longer, there will likely be sizable expenses related to medical care, long-term care, and critical illness. These costs can chip away at a legacy as much, or more, than taxation. This is where life insurance fits into longevity planning by providing a tax-advantaged solution to replacing wealth lost to taxation and the expenses of living longer.

**Cash value life insurance is a unique planning tool because premiums paid grow tax-free and can be accessed tax-free during one’s lifetime.**

Cash value life insurance is a unique planning tool because premiums paid grow tax-free and can be accessed tax-free during one’s lifetime. Then, when the death benefit is paid, it is income-tax free and, if structured properly, can be estate-tax free. The tax attributes of life insurance are unique, which is why these policies are utilized by those wishing to protect wealth earmarked for the next generation.

### CONCLUSION

The risk management needs of high-net-worth clients are unique and challenging due to their increased exposure through their various assets and lifestyle. In addition, global trends have increased risk in various sectors, i.e., unpredictable weather and soaring settlement costs from vehicular accidents.

To protect clients from liabilities, advisors should deploy a variety of risk management strategies. Trusts and LLCs are great tools to achieve reduced exposure, but advisors also should be aware about how insurance can be used to protect these entities. Trust insurance also is part of this equation.

People are living longer and need estate planning with sound risk management strategies so that their retirement years stay golden. Annuities, long-term care insurance, and life insurance should be part of a smart estate plan so that clients’ present and future are protected.

Life insurance can be an important asset for wealthy individuals as a unique and valuable alternative asset class that can contribute to wealth preservation, tax efficiency, liquidity, creditor protection, business continuity, and philanthropy.

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**ENDNOTES**


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