

IRA Qualified Charitable Distributions



Thomas D. Peebles, Jr.

Owners of IRA's who are age 70½ or older have until December 31, 2013, to complete one of the best lifetime charitable giving strategies available: a qualified charitable distribution.

Under Internal Revenue Code Section 408(d)(8)(A), clients who are 70½ or older can make income tax free distributions from their IRA's to a qualified charity of up to \$100,000. These distributions satisfy minimum required distribution requirements and are not subject to the charitable contribution percentage limits since they are neither included in gross income nor claimed as a charitable deduction. For charitably inclined clients who do not need the required minimum distribution from their IRA's, use of the qualified charitable distribution technique provides enormous benefits. Note that the provision of the Internal Revenue Code which permits qualified charitable distributions from IRA's is scheduled to expire on January 1, 2014, so 2013 is the last year to take advantage of this technique unless Congress extends this provision.

Clients should be aware of some of the following key points in connection with the use of a qualified charitable distribution (QCD):

- Only distributions from IRA's, including ROTH IRA's, qualify; distributions from 401(k)s, pension plans and others are not eligible.
- The owners of the IRA must have attained 70½ years of age.
- Owners of "inherited" IRA's can make qualified charitable distributions if they are age 70½ or older.
- The QCD must be made to a qualified public charity; distributions to private foundations, supporting organizations, donor advised funds, charitable remainder trusts or to establish a charitable gift annuity are not eligible.
- A QCD must be made directly by the IRA trustee or custodian to a qualified charitable organization. If the distribution is made to the IRA owner who then contributes the funds to charity, the distribution does not qualify and will be taxable income to the IRA owner. However, if a check from an IRA trustee or custodian is made payable to the charitable organization and delivered by the IRA owner to that organization, then the payment is considered a direct payment by the IRA trustee/custodian to the charitable organization and does qualify as a QCD.
- An IRA owner who makes a QCD in an amount equal to or greater than the owner's required minimum distribution for a tax year is considered to have satisfied the minimum distribution requirement for that year even though the charity (and not the IRA owner) is the recipient of the distribution.

- A QCD should be made before the IRA owner takes their required annual minimum distribution for 2013.
- A QCD is not subject to withholding since an IRA owner that requests a QCD is deemed to have elected out of withholding.
- The IRA owner may not take a charitable income tax deduction for amounts transferred from the IRA to charity, but the exclusion of the distribution from the IRA owner's gross income produces a better tax result.
- IRA donors need receipts of the same kind provided for other types of charitable contributions, so the donor needs to obtain appropriate documentation of the gift from the charity.
- The maximum amount excluded from the IRA owner's gross income is \$100,000.
- An IRA owner can use a QCD to satisfy an outstanding pledge to a qualified charity.
- QCDs do not count against the income tax charitable deduction ceilings (50% of adjusted gross income for cash gifts, 30% for gifts of appreciated securities, with a five-year carryover for excess deductions).

If you have any questions regarding the use of IRA Qualified Charitable Distributions, or any other charitable giving strategy, please contact any member of the CECB Estate Planning Practice team.

In the News

CECB is pleased to report that three CECB attorneys were speakers at the Estate & Trust Institute's annual meeting. Clifford S. Brown, Thomas D. Peebles and Douglas D. Lee all spoke at the event on areas including; Recent Developments in Missouri and Federal Law Affecting Estates and Trusts, Navigating the Probate Process and Ethical Scenarios – Attorney Malpractice.

CECB congratulates John M. Carnahan, III for his recent selection as a founding member of the University of Missouri-Columbia School of Law Tax Law Society Advisory Board. In September John attended a Board meeting and judged the student transactional law competition.

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Inflation - Adjusted 2014 Transfer Tax Figures



Thomas D. Peebles, Jr.

Several tax figures are adjusted annually for inflation based on the average Consumer Price Index (CPI) for the 12-month period ending the previous August 31st. The August 2013 CPI has now been released by the U.S. Department of Labor. Using the CPI for August 2013, and the preceding 11 months, some of the anticipated 2014 adjustments can be summarized as follows:

1. Estate/Gift/Generation-Skipping Tax Exemptions. For gifts or transfers made in 2014, and for those dying in 2014, the exclusion amount will be \$5,340,000 (up from the \$5,250,000 exclusion in 2013).
2. Gift Tax Annual Exclusion. For gifts made in 2014, the gift tax annual exclusion will be \$14,000 (the same as for gifts made in 2013).
3. Estate & Trust Income Tax Rates. For 2014, the income tax brackets for income taxable at the estate or trust level will be:

If taxable income is:	The tax is:
a. \$2,500 or under	15% of taxable income
b. Between \$2,500 and \$5,800	\$375 plus 25% of the excess over \$2,500
c. Between \$5,800 and \$8,900	\$1,200 plus 28% of the excess over \$5,800
d. Between \$8,900 and \$12,150	\$2,068 plus 33% of the excess over \$8,900
e. Over \$12,150	\$3,140.50 plus 39.6% of the excess over \$12,150

Protecting Your Intellectual Property: Easier Than You Think



Jay Preston

Most people, attorneys included, probably don't give much thought to protecting their intellectual property through formal registration; intellectual property in this

article referring to trademarks and works subject to copyright protection. Whether it is because we don't think such registration is necessary, isn't worth it, or are unaware of exactly how to procure it. Given the low cost of registration and the substantial benefits available to registered works and marks it is advisable to register any work or mark that is distributed publicly or that is created with any intention to sell.

The most well known form of intellectual property protection is copyright. This protection extends to material that is authored, original, and fixed in a tangible medium of expression: including books, articles, music, plays, pictures, sculptures, movies, drawings, and a multitude of other material. As of 1978 copyright protection is exclusively a matter of federal law. The protection under federal law attaches immediately once the work is created, registration of the work is not a pre-requisite for protection.

However, registering your copyright and taking steps to insure that others are aware of your authorship of the work provide significant advantages should a dispute arise involving the work. One important step to take is to place a copyright notice on the work itself. This is especially important if you plan to publicly distribute the work. Generally, this notice

should include: (1) the word Copyright, the abbreviation "Copr.," or the symbol ©; (2) the year the work was first published; and (3) the name of the owner of the work. The notice must be displayed so as to give reasonable notice of the claim of copyright, meaning that it should be of sufficient size and clarity to be read by the naked eye. By affixing this notice a defendant in a copyright infringement suit may not claim that his or her infringement was innocent in the hopes of lessening the amount of damages awarded.

Apart from the placement of the copyright notice it is even more important to register the work. The fee charged by the copyright office for registration is thirty five dollars. By registering the work the author or owner creates evidence establishing the validity and ownership of the copyright, is allowed to file suit to enforce the copyright in federal court, and if registered within three months of the work being first published or within one month after learning of the infringement a court may award statutory damages and/or attorney's fees. The availability of statutory damages, as opposed to actual damages, is important as proving actual damages, usually profits lost as result of the infringement, in a copyright case is often difficult and uncertain.

Protection is also available for trademarks and service marks. A trademark being a name or symbol that distinguishes goods made or sold by a business, and a service mark being the equivalent for a business that offers services as opposed to goods. Protection for these marks is available under both Missouri and federal law. The mark will obtain common law protection in Missouri

once it is used. "Used" requires that the mark be placed on the good sold or displayed in the sale or advertising of the service in Missouri.

Once "used" in Missouri a mark may be registered with the Missouri Secretary of State, thereby obtaining both common law and statutory protections; the registration fee is fifty dollars. The registration lasts for ten years and may be renewed for a ten dollar fee. A registered mark enjoys several benefits over an unregistered mark. The owner of an unregistered mark is able to file suit to prevent the use of an infringing mark if such mark is likely to cause injury to the owner's business reputation or dilute the distinctive character of the owner's mark. If the mark is registered the owner may also seek an award of all profits that were derived from the use of the mark or damages suffered by the wrongful use of the mark. This is in addition to the fact that registration creates evidence of ownership, just as in copyright. A mark may also be registered at the federal level by filing an application with the U.S. Patent and Trademark Office.

Formal registration of a mark or a copyrightable work may not generally come to mind or appear important when the work or mark is first used or created, but the advantages available to registered works and marks are substantial if a conflict involving ownership or use should ever arise. These advantages, weighed against the low cost of registration, require that any business or individual with registrable material give serious consideration to registration.

Subpoena Compliance – Missouri’s New Court Rule



Christiaan D. Horton

In the past, attorneys would often seek the issuance of Subpoenas for service on third parties, usually custodians of records, on short notice to secure the production of documents related to their case. Is this because many attorneys procrastinate? Maybe so. However, our Missouri Supreme Court has recently addressed this practice by formulating a new subpoena rule that is designed to protect third parties from this potential abuse and to give other parties to the civil litigation a “head’s up” that such documents are being requested with enough time to formulate objections to the production.

Subpoena Issuance 101: Missouri Supreme Court Rule 57.09 sets forth the process and procedure for serving subpoenas to secure deposition testimony and document production from third parties. It should be noted that subpoenas may only be issued by an officer or person before whom depositions may be taken, like a Court Reporter, or by the Clerk of the Court in which the civil action is pending. The subpoena must state the name, address and telephone number of all attorneys of record and self-represented parties, and must command each person to whom it is directed to attend and give testimony at a time and place specifically set forth in the subpoena.

In conjunction with the deposition notice, the subpoena may also command the production of books, papers, documents or other tangible things. Of course, a Court may quash or modify the subpoena if it is unreasonable or oppressive or may require the party who issued and served the subpoena to advance the reasonable cost of producing the documents and things requested (i.e., copy charges and search fees for archived records).

Time Requirements for Service of Subpoenas. Rule 57.09(c) now sets forth certain protections for subpoenas of this nature that are served on third parties or parties who are not involved in the civil litigation pending before the Court. Under Missouri’s new rule, a subpoena to a non-party for the production of documents and things shall be served no fewer than ten (10) days before the time specified for compliance. This gives all attorneys and parties an opportunity to assess whether the subpoena was properly issued and allows time for court intervention through motions to quash or modify the subpoena if it is unreasonable or oppressive. **The party serving a subpoena on a non-party must also provide a copy of the subpoena to**

every party in the case with a proof of service, and a party objecting to the subpoena is allowed to seek a protective order under Rule 56.01(c).

Missouri’s new rule also puts the responsibility on the attorney who initiated the issuance and service of the subpoena to take reasonable steps to avoid imposing undue burden or expense on a non-party subject to the subpoena.

Written Agreement Required to Avoid Deposition.

It was also common practice for attorneys to acquire documents from third parties by instructing that a deposition was not necessary if the documents could be produced in advance of the deposition date and supplied to the attorney requesting them. This allowed attorneys to essentially gather documents without the knowledge of other parties or attorneys in the case. This practice is no longer permitted with the new rule. Now Rule 57.09(c) requires an agreement of all parties in the civil action to excuse a non-party from appearance at the deposition and production of the subpoenaed items in advance. In other words, all attorneys of record on the case must approve of this practice which prevents secret gathering of documents in advance of the deposition date contained in the subpoena. If all parties agree, the third party may produce documents to the requesting attorney or party who is then responsible for providing all other parties the opportunity to inspect or copy the subpoenaed items. Furthermore, the requesting attorney or party must advise the non-party in writing of this agreement reached, and provide a copy to all attorneys of record and self-represented parties of this communication. Absent such an agreement, the subpoenaed items shall only be produced at the deposition. Again, this insures that all parties and attorneys have the same opportunity to review and inspect the documents and things produced.

Third parties beware: you must attend the deposition and produce the documents requested unless you have a signed agreement from all attorneys and unrepresented parties that such attendance is not required!

Business Record Affidavits. Upon request by any party, the non-party shall also produce with the subpoenaed items a Business Record Affidavit of the Custodian of Records of the Company or person in charge of the safekeeping of the records. The purpose of this affidavit is to provide the foundation necessary to substantiate the authenticity of the documents so they may be introduced at a hearing or trial with proper evidentiary foundation. The Affidavit, if supplied, will in most cases prevent a subsequent court appearance related to the authenticity of the documents.

Rights to Object. A non-party has rights to object to inspection and copying of designated items under the new rule as well. The objection must state the specific reasons why the subpoena should be quashed or modified, and with the ten (10) day rule now in effect, there is time for all parties to be notified and for timely court intervention if an agreement cannot be reached on the subject. If a timely and specific objection is made, the party who issued and served the subpoena is not entitled to inspect or copy the subpoenaed items except pursuant to an order of the court.

Pitfalls of Non-Compliance. Of course, there are “teeth” in the Rule that carry forward from its prior version for those contemplating an approach of non-compliance. Any person who, without adequate excuse, fails to obey a subpoena served upon such person may be held on contempt of court in which the civil action is pending, and could be exposed for liability for attorney’s fees and court costs, and in extreme cases, potential confinement, until the contempt is purged as ordered by the court.

Take Aways. Often, third party compliance with subpoenas is not controversial, but on occasion, significant legal concerns could arise including the obligations that the third party may have to protect privileged and confidential information, including company trade secrets, employment records, and protected health information. A strong recommendation is made to consult with legal counsel should any significant concern arise on the production of sensitive documents. Under Missouri’s new rule, the “I didn’t have time to file an objection or quash the subpoena” excuse will no longer be a viable one. Take comfort knowing that The Litigation Group at Carnahan, Evans, Cantwell & Brown, P.C. stands ready to assist on any subpoena and document production issues you or your company may encounter.

For Your Convenience...

Please feel free to utilize our wireless high-speed internet capabilities when visiting our Springfield office. Using your own personal laptop, you can connect to the internet in any of our conference rooms or in our reception area.



8 CECB Attorneys Selected for Inclusion on the 2013 Missouri-Kansas *Super Lawyers*® List

Each year, *Law & Politics Magazine* invites lawyers in each state to nominate top Missouri and Kansas lawyers, they've personally observed in action. Research is then conducted on each candidate dividing them into practice areas. A panel of preeminent peers in each practice area then evaluates each candidate. From the original pool of candidates, only 5 percent of Missouri and Kansas attorneys are selected for inclusion in Super Lawyers. Meet the six CECB Attorneys that were included in the list.



John M. Carnahan III is a shareholder in the Transactional and Estate Planning Practice Groups of Carnahan, Evans, Cantwell & Brown, P.C. He concentrates his practice in the areas of tax planning, corporate transactions, estate planning, and business succession planning for family-owned businesses. John has been awarded an AV Rating by Martindale-Hubbell.

John is a member of the American College of Tax Counsel. The College is made up of approximately 700 fellows who have been chosen by their peers in recognition of their outstanding reputations and contributions in the field of tax law. John also a fellow of the American and the Missouri bar foundations.

John is also a member of the Springfield Metropolitan and American (Member, Sections on: Taxation, Business Law, and Real Property, Probate and Trust Law) Bar Associations, as well as The Missouri Bar (Chairman, Taxation Committee, 1984-1985). John has also served as an author and editor for the *Missouri Law Review*, *The Journal of S Corporations* and *The Tax Lawyer*. John recently completed service as a member of the Board of Curators of the University of Missouri System (2005-2011). John has been included on the *Missouri Kansas Super Lawyers*® list since 2006.



William E. Evans is a shareholder in the Transactional Practice Group of Carnahan, Evans, Cantwell & Brown, P.C. He concentrates his practice in the areas of taxation, corporations, real estate business, and employer/employee law. He has been awarded an AV Rating by Martindale-Hubbell [highest rating possible].

Bill has significant experience in mergers and acquisitions, tax free like-kind exchanges of real estate, and the formation and planning of limited partnerships, limited liability companies, and corporations.

Bill is currently serving as the International President of the International Brotherhood of Magicians (the "I.B.M."), a not-for-profit organization consisting of over 12,000 amateur and professional magicians worldwide, and is Chairman of its Grievance Committee. Mr. Evans has previously served as the I.B.M.'s Legal Advisor and as a member of the Board of Trustees through its Executive Committee.

Bill is a fellow in the American College of Tax Counsel, an elite group of only 700 tax lawyers in private practice, in law school teaching positions and in government, who are recognized for their excellence in tax practice and for their substantial contributions and commitment to the profession. Bill has also been named to the "Best Lawyers in America" list by the publication of the same name. Mr. Evans has been included on the Missouri Kansas Super Lawyers® list in 2006, and 2010-2013.



Clifford S. Brown practices in the Estate Planning Practice Group of Carnahan, Evans, Cantwell & Brown, P.C. He concentrates his practice in the areas of estate planning, probate, and trust litigation, and related tax matters.

Cliff has served as an educator and speaker on behalf of the Supreme Court of the State of Missouri, the Missouri Bar Association, the University of Missouri - Columbia School of Law, and other organizations in providing continuing legal education to members of the legal profession.

Cliff is listed in *Who's Who in American Law*, as well as *The Best Lawyers in America*. He served as the 84th President of the Springfield Metropolitan Bar Association in 2006. In September 2003, he was appointed to the Board of Law Examiners by the Supreme Court. In 1991, Cliff was elected as a Fellow of the American College of Trust and Estate Counsel. Cliff's community involvement includes serving on the Board of Directors of the Burrell Center and the Community Foundation of the Ozarks.

Cliff has been selected to the *Missouri Kansas Super Lawyers*® list since 2005.



Joseph D. "Chip" Sheppard, III is a shareholder and Chairman of the Litigation/Dispute Resolution Practice Group of Carnahan, Evans, Cantwell & Brown, P.C. He concentrates his practice in the areas of real estate, business, securities and intellectual property litigation, dispute resolution and transactions.

A substantial portion of Chip's practice includes securities and other fraud and fiduciary duty related claims, both as an arbitrator and as counsel for the parties. He has tried a combined total of more than 50 arbitrations, state and federal trials, both jury and non-jury, in his areas of concentration. Other areas of concentration are various business transactions, acquisitions, real estate development and related litigation and probate litigation.

Chip is President of the Springfield Metropolitan Bar Association, Chairman of the Non-Partisan Court Plan Committee, Vice-Chair of the Ozark Technical Community College Foundation Board of Directors, member of the American Bar Association, the Missouri Bar, the Public Investors Arbitration Bar Association. In 2005 he was elected as a Fellow of the American Bar Association, an honor bestowed upon less than .5 percent of the Bar. In 2008, he Co-Chaired the Greene Countians for Fair and Impartial Judges Committee which was responsible for bringing the Missouri Court Plan to Greene County, was a finalist for Missouri Lawyer of the Year and received the Missouri Bar Association and Springfield Metropolitan Bar Association President's Awards in recognition of extraordinary service to those Associations and the legal profession. Chip has also been named to the "Best Lawyers in America" list by the publication of the same name.

Chip was selected to the Missouri Kansas Super Lawyers® list in 2005 and 2006 and again for 2010-2013.

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Missouri-Kansas Super Lawyers - Continued from Page 4

Thomas D. Peebles, Jr. is a shareholder and member of the Estate Planning Practice Group of Carnahan, Evans, Cantwell & Brown, P.C. Mr. Peebles has concentrated his practice in estate planning and estate and trust administration matters since 1980. Tom has significant experience in the preparation of basic and sophisticated estate planning documents, and in wealth transfer planning for high net worth clients, closely held business owners and their families. He has been awarded an AV Rating from Martindale-Hubbell in recognition of his preeminent work in assisting his clients in achieving their estate planning goals and objectives. In 2004, Mr. Peebles was elected a Fellow of The American College of Trust and Estate Counsel in recognition of distinguished service in the practice of estate planning, probate and trust law.

Tom has been honored since 2010 with being named to the "Best Lawyers in America" list. Tom was also elected by his peers as a Fellow in the American Bar Foundation. Membership as a Fellow in the American Bar Foundation is limited to one-third of one percent of the lawyers in America

Tom has, over the years, devoted a substantial amount of his time towards civic and charitable activities including the Community Foundation of the Ozarks, the Foundation for the Springfield Public Schools and the Springfield-Greene County Library Foundation. Mr. Peebles was recognized as one of ten "Volunteers of the Year" as part of the 2004 Gift of Time Awards sponsored by the Council of Churches of the Ozarks. Tom was selected to the Missouri Kansas Super Lawyers® list in 2005 and 2006 and again for 2010-2013.



John E. Price is a shareholder in the Litigation Practice Group of Carnahan, Evans, Cantwell & Brown, P.C., concentrating in civil and business litigation, environmental law, corporate and real estate law and appellate practice. Mr. Price has wide experience in environmental law over the last 30 years. He has handled litigation under the Clean Air Act, Clean Water Act, Superfund and toxic torts. He regularly advises clients on environmental regulation, permitting and real estate transactions. John has an AV Rating by Martindale-Hubbell.

John also has much experience with large, complex real estate and business transactions, and with commercial litigation involving leases, contracts and insurance disputes. He has argued over 75 appeals in federal and state appellate courts.

Mr. Price has served as a board member for eight years and was the 2010-2012 President of the Springfield Sister Cities Association, and is currently on the board and entering a term as the 2012-2013 Chairperson of the Springfield-Greene County Park Board. In the past he has served on the board and as President of the Wilsons Creek National Battlefield Foundation, as a board member and President of the Visiting Nurses Association of Springfield, as a member of the Springfield Environmental Advisory Board, as a member and volunteer for Project Parkway. John was recently honored with a 2012 Gift of Time Award from The City of Springfield and the Council of Churches of the Ozarks.

John has been selected to the Missouri Kansas Super Lawyers® list since 2007.



Rodney H. Nichols is a Shareholder of the firm and is part of the Banking, Litigation and Transactional Practice Groups of Carnahan, Evans, Cantwell & Brown, P.C. He concentrates his practice in the areas of banking and creditor's rights, commercial, real estate and probate litigation as well as general corporate and business matters. He has served as Chairman and Vice Chairman of the Bank Counsel Section of the Missouri Banker's Association and remains a member of its advisory board.

Mr. Nichols devotes a significant amount of time to the community and has served as Chairman of the Board of Directors for the Developmental Center of the Ozarks. In October 2004, Mr. Nichols was appointed by the Greene County Commissioners to serve as a Member of the Springfield/Greene County Library Board of Trustees and served two terms through July, 2011. In 2003, he was recognized by the Springfield Business Journal with their "40 Under 40" award, for his outstanding contribution to the community and his profession. He currently serves on the Board of Directors of the James River Basin Partnership.

In January 2007, Mr. Nichols was appointed as a Member of the City of Springfield's Jordan Valley Park Tax Abatement and Tax Increment Financing Commission. In 2011 he was selected to serve as a member of a task force organized by the City of Springfield to evaluate the future use and development of a parcel of real estate owned by the City adjacent to the City's Exposition facility.

Mr. Nichols is a graduate of Leadership Springfield, Class XVI. Mr. Nichols' professional memberships include the Springfield Metropolitan Bar Association, the American Bar Association, and the Missouri Bar.



Richard B. Maltby is a shareholder of the Litigation/Dispute Resolution Practice Group of Carnahan, Evans, Cantwell & Brown, P.C. He concentrates his practice in the areas of construction, architectural, engineering and development law, business litigation, real estate litigation, and alternative dispute resolution.

Rich has substantial experience handling all aspects of the construction process, including bidding, contract negotiation, project management, and claims resolution. His representation has included many widely recognized owners, developers, contractors, subcontractors, suppliers, design professionals, and lenders throughout Missouri, the Midwest, and the United States. Rich was recognized by the Missouri Lawyers Weekly as a 2011 Missouri Up and Coming Lawyer.

Rich was also named to the Missouri & Kansas Super Lawyers list as a 2012 Rising Star and the Springfield Business Journal list as a 2013 member of 40 Under 40. He currently is participating in Leadership Springfield, Class XXIX and is the President of the Construction Specifications Institute, Southwest Missouri. This was Rich's first year for inclusion in the Missouri Kansas Super Lawyers® list in the area of Construction Litigation.



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Founded in 1979, Carnahan, Evans, Cantwell & Brown, P.C. is a locally owned and operated law firm noted for its commitment to providing superior client service to a diverse client base, including national and regional businesses, financial institutions, not for profit organizations and individual clients. The Firm currently has 18 attorneys, including seven who have their Master of Laws in Taxation. An “A-V rated” preeminent law firm by Martindale-Hubbell, our attorneys are engaged in the general business practice of law with an emphasis in the following areas:

- Business Organization and Planning
- Corporate
- Estate Planning
- Probate
- Trust Administration
- Transactions
- Local Government Law
- Real Estate and Construction
- Taxation
- Employee Benefits
- Banking
- Commercial Litigation and Dispute Resolution
- Environmental and Utility
- Economic Development
- Intellectual Property and Franchise
- Arbitration and Mediation
- Mechanics’ Liens and Foreclosures
- Pension and Profit Sharing
- Employment
- Zoning and Land Development
- Wealth Strategies

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