On the other hand, wealth succession provides access to better education and medical services and increased opportunities, including residential choices, and presents easier opportunities for self development among future generations. Hence the paradox: How can we structure estate plans to provide all of the positives that access to wealth can create, while minimizing or avoiding the negatives of what I'll call "wealth lethargy?" That answer we'll leave for a future discussion.

Endnote

1. This is the phrase used by the authors. Other than reading this article, my knowledge of what happened in Tulsa, Okla. in 1921 is somewhere between ignorant and non-existent. In this review, I continue to use this phrase as it appears in the article as well as using other terms used in the article.

REVIEW BY: **Avi Z. Kestenbaum**, a partner at Meltzer, Lippe, Goldstein & Breitstone, LLP in Mineola, N.Y. and New York City and an adjunct professor at Hofstra University School of Law in Hempstead, N.Y.

AUTHOR: David Horton, professor of law, University of California, Davis School of Law in Davis, Calif.

ARTICLE: "Revoking Wills," *Notre Dame Law Review* (forthcoming 2021)

Estate-planning attorneys are very familiar with the rigid formalities of both making and executing a valid will. Wills are different from any other legal documents in this regard because even a minor and seemingly innocuous error in the process of executing the will can invalidate it despite the testator's very clear wishes. The historical rationale for these formalities was to prevent fraud and undue influence and to underscore the seriousness of a document that disposes assets at death. Furthermore, wills are often executed by individuals who are elderly or in compromised positions, and maintaining formalities helps assure authenticity.

In contrast, estate-planning attorneys may not be as familiar with the formalities and process of revoking a will. Similar to the precision in executing a will, even if it's crystal clear that the testator has intended to revoke a will, the revocation will fail if strict formalities aren't met. This well researched and clearly written article sheds light and insights on the issues and complications of properly revoking wills and cogently argues that there should be far less rules and rigidities in this process. The article also explains that the courts have started to move in a better and more flexible direction if the testator's wishes of revocation are clear. The author also advocates for an easier and simpler revocation process and to adopt similar rules for will revocation as for the far less rigid trust revocation. He argues that much more good than harm will occur with a more relaxed revocation standard, and the testator's true intent will far more likely be fulfilled.

The article teaches and hammers home some critical and fundamental points about will revocation and is eye-opening even to the experienced attorney. What are the formalities to revoke a will? Are they, or should they be, the same as to execute a will? How does one revoke a will by properly destroying or writing on it? The article illustrates several court cases in which the testator clearly attempted to revoke the will by writing certain marks on it, crossing items out and writing "void," among other examples, only to see the courts not invalidate the will for failure to follow revocation formalities and the assets passing clearly against the testator's wishes.

The article traces the history of will formalities starting with the very stringent and archaic British statutes from the 16th and 17th centuries to the more modern day thinking of the 20th and 21st centuries. Only recently, the courts in some jurisdictions have relaxed some of the formalities to preserve the wishes of the settlor. The history is fascinating and helps the reader better understand and appreciate the evolution of the will execution and revocation laws. Modern technology also adds new questions and complications, such as the ability to electronically sign, destroy or revoke a will. In fact, clients often ask me why they need to come to my office to sign or edit their wills if other legal documents can be e-signed.

At its conclusion, the article focuses on the more current day thinking of some jurisdictions and courts, which have relaxed some of the revocation

formalities. However, the author feels that this isn't enough to assure the testator's wishes will be fulfilled. The author advocates that the will revocation formalities be more similar to trust revocation, which is far more flexible and less rigid. He makes some excellent suggestions and proposals to modernize the rules.

As an experienced practicing trusts and estates attorney, I am torn by the theme and the author's suggestions. While he makes some very intelligent points, I've seen many cases of mischief and undue influence involving wills and trusts. Relaxing will revocation rigidities could help enable greater fraud and undue influence, especially as revocation often occurs when the testator is elderly or compromised mentally or physically. Keeping strict formalities helps alleviate at least some of these potential issues, which happen sometimes, and would likely occur even more frequently without very stringent rules. Estate litigation is already one of the busiest and fastest growing areas in the legal profession in no small part because of these issues. That being said, I highly recommend estate planners read the article to grasp the importance and severity of the will revocation formalities, which they may not fully realize, and to learn of the current shifts in some courts and jurisdictions. Perhaps the author will be proven correct in the near future with new laws being enacted with more relaxed standards for will revocation similar to trust revocation, even if I may personally disagree with this approach.

SPOT LIGHT

Face Off

Sultan Va a Competir by Ramon Oviedo sold for $2,520 at Doyle's Latin American & Post-War & Contemporary Art sale on Oct. 27, 2021 in New York City. Oviedo was one of the leading figures of Dominican painting in the 1960s. His Expressionist and Abstract works often depicted people of color in a tropical climate and featured a strong, bold color palette. His murals and paintings are exhibited in various museums throughout the Dominican Republic.

REVIEW BY: **Carlyn S. McCaffrey**, partner at McDermott Will & Emery LLP in New York City

AUTHORS: Beckett G. Cantley, senior partner, and Geoffrey C. Dietrich, managing partner, both at Cantley Dietrich, PC, in Las Vegas and Dallas, respectively

ARTICLE: "The U.S. Supreme Court in *Kaestner*: Deciphering the Constitutionally Required Minimum Contacts Necessary for State Taxation of Trust Income," *Virginia Law & Business Review* (Spring 2021)

In *North Carolina Department of Revenue v. Kimberley Rice Kaestner 1992 Family Trust,*[1] the U.S. Supreme Court provided guidance as to the minimum contacts required to protect a state's taxation of a trust's income against a due process challenge. The article by Beckett G. Cantley and Geoffrey C. Dietrich provides an excellent description of the limited nature of that guidance and a helpful set of planning principles which, if followed, could minimize the exposure of a trust to state income tax.

State income taxes are an important source of revenue for most states. Forty-two states and the District of Columbia impose a tax on the income of their resident individuals and resident trusts, with rates ranging from a low of 2.9% in North Dakota to a high of 13.3% in California. Each state has its own method of determining the residency of individuals, usually based on domicile or on some degree of physical presence within the state.

The residency of a trust is a more elusive concept. Although a common law trust is treated as if it were