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# - CAPITOL CONNECTIONS -

## THE SHORT AND LONG OF IT

By Keith Burbank

It wasn't too long ago that we wrote the following concerning US Equities: "Remarkable not only for their strong returns, but also their consistency and lack of volatility." Oh, where have those times gone? 2018 has been the polar opposite of consistency and low volatility when it comes to US Equities. So what has happened? Most investors have realized the new normal. The economy is moving toward a late cycle and the Fed is tightening policy faster than markets expected. These two factors have put added pressure on equity valuations and the term premium for bonds. The euphoria over tax cuts from late 2017 has waned and investors have not been able to so easily brush off geopolitical concerns from around the globe.



At the same time, the fundamentals of the economy have remained strong, with fourth quarter GDP coming in at 2.9% and employers continuing to hire at a pace that has kept the economy near full employment. The Fed has signaled that it will continue to raise rates at a measured pace while attempting to keep inflationary pressures under control.

Corrections are always unnerving, especially because they tend to be processed over time as opposed to singular moments in time. Traditional stock market fundamentals remain supportive of an ongoing bull market. Over the long haul, stock prices follow earnings and earnings are expected to grow 21% this year and another 11% in 2019. If you overlay earnings and the S&P 500 over the last 100 plus years, there is basically a perfect correlation. Growth is a tailwind that can forgive many sins and can cover up other issues, like high valuations and tightening liquidity conditions. The U.S. economy doesn't look to be anywhere near a recession, which has historically accompanied bear markets, as The Index of Leading Economic Indicators rose again in March, continuing a robust uptrend.

While the sharp moves in stocks have been unnerving at times, the economic and earnings environment should support a continuation of the bull market, albeit with more volatility, some elevated risks and erratic behavior in the near term. We believe that investors with long-term horizons and a disciplined investment approach should be rewarded as the bull market continues to ride on.

## ADVANCE DIRECTIVES

By James G. Steproe, J.D.



The brief articles that I have written are designed to raise awareness to some aspect of estate and financial planning that has caught my attention and I believe worthy of yours.

My wife and I recently made some revisions to our estate plan, and while doing so realized that we had never gotten around to creating and signing “advance directives”. These are among the few documents that could be as important as your trust or last will and testament. They are important because they give you a voice in making medical decisions, should you become incapacitated and unable to speak for yourself.

*Primum non nocere* is a Latin phrase that means “first, to do no harm”. It is one of the principal precepts of bioethics that all healthcare students are taught and is a fundamental principle throughout the world. It is also how we want to think of our own healthcare providers - That their priority is “to do no harm”. Furthermore, we also expect them to do everything possible to cure or control disease and, if necessary, save our lives.

Doing no harm and saving lives by providing patients with the best that medical science had to offer presented few legal or ethical difficulties until mid-20th Century when advances in medicine made it increasingly possible to maintain human life under conditions and circumstances not previously imagined. By the 1950's the work of many if not most of our organs could be replicated by machines tethered to us by invasive tubes. Indeed, we could now be kept alive long after anything resembling a quality life had ended, along with our capacity to make our own healthcare decisions.

In 1975, the case of 21 year old American woman, Karen Ann Quinlan, brought the right to die controversy to the country's attention. Quinlan became unconscious after she consumed Quaaludes along with alcohol while on a crash diet and lapsed into a coma, followed by a persistent vegetative state. Under threat from prosecutors, doctors refused the request of Karen's parents to disconnect her respirator which they believed constituted extraordinary means of prolonging her life. Her parents subsequently filed suit.

The Quinlans' lawyers argued that Karen Ann's right to make a private decision about her fate superseded the state's right to keep her alive, while the court-appointed guardian argued that disconnecting her ventilators would be a homicide. When their request was denied by a lower court, the Quinlans appealed the decision to the New Jersey Supreme Court. On March 31st, 1976, the court granted their request, holding that the right to privacy was broad enough to encompass the Quinlans' request on Karen Ann's behalf. Despite this decision the case continues to raise important questions in moral theology, bioethics, euthanasia, legal guardianship and civil rights. The case has affected the practice of medicine and law around the world.

One longstanding result has been the increased popularity and use of advance directives, which are statements detailing a person's desires regarding their medical treatment in circumstances in which they are no longer able to express informed consent, especially an advance directive. They may be oral or written; however, written is strongly preferred.

New Hampshire, as well as in many other jurisdictions, recognizes a written advance directive as a legal document with two parts: A Durable Power of Attorney for Health Care and a Living Will.

In the Durable Power of Attorney for Health Care you name another to act as your health care agent to make medical decisions for you if you lack the "capacity" to make them. You can include specific instructions about treatments you do not want or for how long you want to try possible treatments.

The Living Will is a legal document that instructs health care providers to withhold life-sustaining treatment if you are near death or are permanently unconscious, without the hope of recovery. Unlike the Durable Power of Attorney for Health Care, it does not require someone else's decision.

Even if you fail to complete advance directives, 46 states have enacted default surrogate consent statutes, (Massachusetts, Minnesota, Missouri, Nebraska, Rhode Island, and Vermont have not). They provide legal authority for health care decision-making through a non-judicial rule of law when no guardian or agent had been appointed. States which have adopted these provisions recognize the importance of alternative means of consent to health care in the absence of advance directives. Surrogate consent laws allow physicians to consult a designated individual or group of individuals who can presumably convey the incapacitated or incompetent patient's health care wishes and provide informed consent or refusal to proposed health care interventions.

In states that have adopted hierarchy surrogate consent laws, family members and the people closest to the patient by kinship usually become the designated surrogate.

In 2015 New Hampshire amended its law to allow for a medical surrogate to make decisions on behalf of a patient without a judicial order for up to 90 days, in an order of priority beginning with the patient's spouse, then adult children and down through a list of family members ending with agents with financial powers of attorney and guardians of the patient's estate. Just as dying intestate, the state law at least gives some direction, even if it is not the one you would have taken had you bothered to prepare an advance directive.

In conclusion, if you haven't already, get this done sooner because later will often be too late. Forms are available online or from many healthcare providers. This might be one of those things you should discuss with your attorney. Additionally, don't forget to discuss this with the person you have designated and make sure they, along with your healthcare provider, have a copy of your signed documents.