Will My Estate Plan Accomplish My Goals?
Will My Trustee/Personal Representative Know What To Do?

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MARCH 5, 2016

How many have read your estate planning documents?

How many understand them?

Vocabulary questions? Ask me!
Agenda

Introductions

Estate Tax Timeline

Tell me what you came to learn?

What Now? - Considerations for Non-Taxable Estates

• Common Planning Options
• Portability
• Personal Planning Goals
  • Protecting beneficiaries from the hits of life
  • Creditor Protection
  • Predator Protection
  • Incapacity Planning
  • Etc.

Definition of Estate Planning

I Want to Control My Property While I’m Alive and Well,
Plan for Me and My Loved Ones if I become Disabled,

Then Give What I Have
To Whom I Want
When I Want
The Way I Want,

All While Assuring My Wisdom is Transferred Along with the Rest of My Wealth.
Estate Planning = Estate Tax avoidance and GST planning (pre-2012)

Planners focused on creating plans that resulted in little to no estate tax, with little time spent on clients’ personal concerns. The tail wagged the dog!

### Estate Tax Timeline

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<th>Tax Rate</th>
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**BIG Changes**

The exemption from federal estate taxes has increased significantly since 1997 while the estate tax rate has significantly decreased.

2010 – Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act (“TRUIRJCA”)

2013 – American Taxpayer Relief Act (“ATRA”)

- ATRA provided “permanent” changes to the laws governing federal estate taxes, gift taxes, and generation skipping transfer taxes
- Portability (the ability to transfer or “port” a deceased spouse’s unused exemption amount) became an option – estate tax exemption was no longer a “use it or lose it” proposition

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**Effect of Tax Changes**

Estate tax has largely been removed from the radar screen.

According to the IRS website, the number of estate taxable estates since 1999 has decreased 91%!

The number of Americans with estates subject to the estate tax is less than 1% (perhaps as low as 0.2%)

The tax focus has shifted from estate tax planning to income tax planning!
Bypass Trust vs. Portability

Be aware of the capital gains trap in the bypass trust - no step up in basis on second death.

With portability, the surviving spouse can claim the DSUE, and whether the assets are placed in the Survivor’s Trust or a Marital/QTIP trust, the assets will be taxed upon the death of the survivor, resulting in a second step up in basis on the death of the surviving spouse.

Remember - To claim portability, a 706 estate tax return must be filed for the deceased spouse’s estate!

Is Estate Planning DEAD?
"New" Drafting Options

Bypass Trust plan is (almost) a thing of the past. With portability, we no longer need to use the exemption on the first death.

Bypass Trust alternatives:

• All to Survivor
• All to Survivor with disclaimer to a Bypass Trust or the residuary share
• Survivor’s Trust and Marital/QTIP trust
“All to Survivor”

Pros:
• Ease of use
• Efficiency
• Less administration

Cons:
• No creditor protection for survivor
• Completely revocable and amendable
• No remarriage protections

“All to Survivor with Disclaimer…”

Pros:
• More options for surviving spouse
  • Can create creditor and remarriage protection when using the disclaimer
  • Can transfer assets immediately to residuary beneficiaries if the Survivor doesn’t need the assets

Cons:
• Same as “All to Survivor” option if Survivor fails to disclaim
• Survivor RARELY disclaims
“Survivor’s Trust and Marital/QTIP Trust”

Pros:
• Creditor protection for assets in Marital Trust
• Remarriage provisions can be built in to Marital Trust
• Can adjust language to follow clients’ wishes as to access to principal for survivor (ensuring more to children)

Cons:
• More administration
  • New EIN; separate accounts; separate ledgers; separate tax returns
  • If survivor is sole trustee of Martial Trust, no guarantee that provisions will be followed

Failure of Focus
Many tax focused estate plans failed to focus on important considerations such as fiduciary (helper) selections, creditor protection, and family dynamics.

Most pre-2012 joint trusts utilized the Survivor/Bypass provisions, even when the estate tax risk was low to non-existent, often ignoring other issues and client goals.
NEW FOCUS = Personal Planning Goals!

Most of you would never stay awake at night worrying about estate taxes, but you will have sleepless nights worrying about your own incapacity, your children, creditors, etc.

What Should a Trustee do Upon a Death (trust “settlement”)?

- Obtain sub trust tax ID
- Prepare trust certifications
- Retitle assets
What Happens When Assets are not Titled in the Trust?

- Small Value: Use Affidavit
- Large Value: Probate

Creditor Protection

Self-settled trusts (revocable trusts) cannot defeat or thwart creditors. A.R.S. §14-10505

Can you protect the assets you leave behind for those you love? YES!
- You can use a spendthrift trust to protect your loved ones from creditors and predators. A.R.S. §14-10502

Lawyers should help by counseling you on the dangers of outright inheritances, and how carefully worded and flexible spendthrift trusts offer the best structure for inheritance.
Adult Children – Lifetime Protected Trusts

Protection for the “Hit Parade” using Lifetime Protected Trust Shares

- Kid Hits the School Bus
- School Bus Hits the Kid
- Marriage Hits the Rocks
- Kid Hits the Bottle
- Kid Hits the Books
- Kid Hits the Lottery
- Kid Hits the Skids

Lifetime Protected Trusts – Who Should be the Trustee?

- Third-Party? Corporate Trustee? Private Fiduciary?
- Family Member?
- Beneficiary?
  - Should the beneficiary serve as the sole trustee? At what age?
  - Should they have a co-trustee?
  - Should there be a requirement that they must serve as a co-trustee for a certain period of time before they become the sole trustee?

Naming the beneficiary as the sole trustee does not defeat creditor protection. A.R.S. §14-10504(E). But is this the right choice? Will the beneficiary treat and protect inherited assets like a third-party trustee would?
Lifetime Protected Trusts – Discretionary Distribution Standards

• Trustee can provide discretionary distributions of income and of principal for Health, Education, and Maintenance A.R.S. §14-10504(E)

• Distributions can be liberal
  • Down payment on house
  • Money to start business
  • New car
  • Investment property

• Distributions can be conservative
  • Trustee can look to beneficiary’s other sources of assets before making distributions
  • Trust may include restrictions (drug test, allowances, incentives for graduation and other education standards, etc.)

Adult Children Other Ways to Leave Your Assets

• Outright (unprotected)

• Sprinkle provisions & Withdrawal Rights
  • “After the beneficiary has obtained the age of 25, the trustee shall distribute one-half of the assets to the beneficiary…”
  • Bad idea why?
    • Distributions are subject to creditors and predators.
    • Is the beneficiary automatically mature enough to handle the money just because they reached a certain age?
    • At what age is the beneficiary divorce proof? Accident proof?

• Better practice to leave assets in trust for life, give the beneficiary a power of appointment, and allow the beneficiary to become a trustee at a given age.
Adult Children Other Ways to Leave Your Assets (cont.)

Inherited IRA
- Typically, beneficiaries have two options with inherited IRAs or other qualified assets: 1) Cash out or 2) Stretch out.
- If a beneficiary opts to stretch the inherited IRA over her lifetime, there can be long-term tax-deferred growth with only minimum distributions.
- Inherited IRA Problems:
  - The beneficiary may choose to cash out at a later date and lose the benefit of the stretch IRA.
  - Lack of creditor protection following Clark v. Rameker. (Creditor protection is available in some states, including Arizona.)

Better Option:
**Retirement Plan Trust:** Created to allow stretch out, and to provide creditor and predator protection (Clark v. Rameker). Appoint a third-party Trustee or Co-Trustee in order to avoid the cash out and to provide creditor protection no matter state of child's residence.

Minor Children – Who Will Serve as Guardian?

Who will be the best person to fill your shoes if you’re gone?

Is there anyone that you would never, ever, ever want to serve as guardian, even temporarily?

**Emergency Guardianship** - Provisions can be added to Durable Power of Attorney

What happens if you don’t come home from date night?
Who has the legal right to take care of the children?
Is the emergency guardian the same person as the permanent guardian?
Minor Children – Providing through Common Trust

A Common, or Pot, Trust is one bucket of money to be used for the benefit of all common trust beneficiaries until they have all reached a certain milestone (i.e. graduation from college or reaching a certain age).

Commonly used for young children when the Trustee will be supporting all members of the group without priority.

Minor Children – Common Trust (cont).

Can treat certain distributions as advancements:

- Wedding expenses (How much is too much?)
- Graduate school
- Down payment for house

What do you want the Trustee to provide?
Minor Children –
Instructions to Guardians &
Trustees

(Questions & Thoughts)

Minor Children –
Pre-College Education

What type of **schooling** do you prefer for your children?

- Public Schools, Parochial Schools, Private and/or Charter Schools, etc.

**Extracurricular Activities:**
Do you want your kids to be involved in extracurricular activities?
i.e. Band, sports, field trips, clubs, Boy or Girl Scouts, special academic programs, etc.
Minor Children – College Education

- How much are you willing to pay? In-State or Out-of-State school, private college?
- Will you require your child to work during college and pay part of their own way?
- Will you have a qualifying grade requirement?
- Do you want your child to take part in a study-abroad program?
- Would you want the Trustee to continue paying for the college education of a “career” student?
- Would you want to provide an incentive to graduate in 4 years or less?

Minor Children – Help for Guardians

- Compensation: Should you consider providing compensation for the Guardian?
  - How will the Guardianship affect the Guardian’s ability to work?
- Vacations: Would you want the Trustee to pay for an annual vacation for both the Guardian’s family and your children?
Minor Children – Visitation with Other Loved Ones

- How important is it to you that your children continue to have contact with members of your family or other loved ones?
- How often would you want your children to see their grandparents? Other loved ones?
- Would you want the Trustee to make funds available so that the Guardian can travel with your children?
- Would you want the Trustee to make funds available to pay for the cost for the grandparents or other loved ones to travel to visit your children?
- Are there individuals with whom you would require supervised visitation?
- Where do you want your children to spend their holidays?

Minor Children – Religious Preference

Do you have a preference that your children be raised within a certain religion?

Is it important to you that your children attend religious services on a weekly basis? For major holidays? Religious education classes?
Minor Children – Safety Concerns

**Automobiles:** Do you have any requirements or wishes regarding your child’s use of automobiles? What about motorcycles? Golf carts? ATVs? Boats or other watercraft?

**Firearms:** Do you have strong feelings regarding the use of or access to firearms by your children? Do you want them to take firearms safety courses?

**Other?**

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Minor Children – Financial Learning

Would you want your children to take a budgeting course? At what age?

Would you want your children to take financial education or planning courses?

Would you like the Trustee to arrange (with the help of the Guardian) for your child to have his/her own bank or investment account to learn basic financial principles and how to invest?

- Would you like your child to work with a certain financial advisor, if possible?
Special Needs Beneficiaries

• What type of benefits is the special needs beneficiary receiving?
• What type of disability does the beneficiary have?
• Are there things that make dealing with the beneficiary’s disability easier for the beneficiary or for the client? Routines?
• Are there certain activities in which the beneficiary likes to engage? Do they like movies? Video games? Sports?
• Are there any dietary restrictions or requirements for the beneficiary?

Fur Babies – Don’t Forget the Four-Legged Children

Pet planning can be thorough (using Pet Trusts), or simple (by making a specific distribution of the pet).

Other considerations:
• Are your pets microchipped?
• What does the pet’s daily routine look like?
• Are there any dietary restrictions or requirements for your pets?
• If a pet were to become ill, what type of treatment would you want the pet to receive?
• If the pet caregiver cannot take the pet or can no longer keep the pet, who do you want to find a new home for the pet?
Special or Difficult Assets

Jewelry, Family Keepsakes, and Other “Special Stuff” – As counselors, we should encourage our clients to:

- Discuss the transfer of assets, such as family memorabilia, why it’s important, where it came from, why it should be significant to their children etc.
- Discuss who will take possession of family photos, videos, journals, etc.
- Consider writing letters to be given to the recipients of certain items detailing the significance of the items

Oil / gas / mineral interests
Real property in other states
Timeshares – Does the client want the Trustee to keep them?
Business interests – Are the business interests going to pass to one child? Will the business be sold?

Specific Distributions

Use the “Personal Property Memorandum”

- Only for tangible, personal (non-business) items. Cannot be used to distribute money, accounts, real property, etc.

List the items and the person(s) you want them to go to, then sign and date

If an item is difficult to describe or can be easily confused with another item, take a picture and put it in your red estate planning binder.
Incapacity Planning

How will incapacity be determined? Doctors vs. Private Determination

- Many physicians are hesitant to make a finding of incapacity.
- Private determination option allows you to choose individuals, such as family members and friends, to decide when you are unable to manage your own affairs.

If you are found to be incapacitated, who should serve as the successor trustee and/or the agent under the Financial Power of Attorney?

- Other spouse? Should there be a co-trustee?
- Children?

Incapacity Planning (cont.)

Who should be supported with your funds if you become incapacitated?

Detailed language should be included in the Trust.

- You only?
- Spouse?
- Other dependents?
  - Minor children
  - Adult children
  - Elderly parents

Should the Successor Trustee be able to make gifts?

- Follow established patterns of gifting
- Creation of new gifting strategy
Health Care Wishes – Long-Term Care

What are your wishes for long-term care.

Do you want to remain in your own home and have your Trustee pay for home health service? Do you want a family member to move in with you to provide home health services? Should your family member be paid?

Do you want to move in with a family member?

Do you want to move into a long-term care facility where you can receive the appropriate level of care? Assisted living on through nursing home care?

• Do you have requirements or preferences regarding the facility?
• How often do you want your Healthcare agent to visit?
• Do you want to be in a place where you can keep a pet?

Health Care Wishes – Medical Wishes & Concerns

• Do you suffer from long-term medical conditions?
• What medications do you take?
• Do you have a preference for physicians or treatment facilities?
• How do you feel about alternative medicine / therapy?
• How do you feel about experimental treatment?
• How do you feel about living donor organ donation?
Health Care Wishes – End of Life

• What type of treatment would you want?
• Who do you want to be involved in the decision-making? Family members, religious clergy?
• Do you have any personal wishes you want followed? Does your religion have any specific teachings regarding end of life care?
• What if you were pregnant? Would your choices change in that scenario?

Memorial Instructions

• Do you want to be buried or cremated?
• Where do you want your body buried?
• Do you want your cremains buried or spread? Where?
• Or do you want a family member to keep your cremains? What happens when that family member is gone? What then?
• Do you want a service? What type? i.e. Religious? Open or closed casket? Party?
Family Meetings

Consider holding a “Family Meeting” with you and your “helpers” to review your plan and estate planning goals.

Open communication is often the key to a successful estate plan.

Why Should A Family Meeting Be Held?

• To educate the family members and helpers
• Identify each of the legal documents in your plan and explain the purpose
• Review any special family circumstances
  • Special needs
  • Inherited IRA trusts
  • Special or difficult assets
  • Specific Distributions
  • Family issues
• To review the process for communication if you are disabled or die
• To allow family members to ask questions in a comfortable setting
Benefits of the Family Meeting

• Explain in general terms what steps you have taken and why
• Explain what the various family members’ roles are
• Explain the order of appointees and why chosen (particularly if there’s going to be hard feelings among the children)
• To prepare the family members as to what they need to do if you become disabled or die
• Communicate importance of family values and what values you are passing on in your plan

Family Meetings – Who Should Attend?

• Family members involved in the plan (Spouse, children, and other beneficiaries)
• Trustees
• Personal Representatives
• Guardians
• Agents under the Financial Power of Attorney
• Agents under the Health Care Power of Attorney
• Other professionals on the planning team (Investment advisors, CPA, life insurance agent, etc.)
Where Will the Family Meeting Take Place?

- In the estate planning attorney’s office OR
- In the office of your trusted planning advisors
- Out of town family members or helpers can attend by conference call, Skype, or Facetime.

What Will We Not Talk About?

Your ASSETS!

You may be hesitant to disclose assets to your loved ones and helpers. That’s OKAY!

There is no need to disclose assets in the Family Meeting, unless you are comfortable doing so.
Things to Remember

Estate Planning is a Process, not a transaction.
And, estate planning is not just about taxes!

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