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The Estate Planning Interview

by Dennis C. Reardon, JD, LLM, CLU, ChFC

ABSTRACT

We look at the estate planning interview and fact-finding process. Topics include information to be gathered before meeting the client face-to-face, beneficiary issues, selection of fiduciaries, and how you can add value to the estate plan.

Vol. 70, No. 5 | pp. 19-22

This issue of the Journal went to press in August 2016.
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In this column, I have often discussed estate planning techniques that the reader may consider only a few times a year. Today, I'm going to cover something that has broader appeal: the estate planning interview and fact-finding process. All professionals who provide estate planning services communicate with new or existing clients to advance solutions for their estate planning needs. While fact-finding and the interview, as a topic, may seem a basic concept to consider, it is often the case that acquiring a level of mastery in any endeavor involves an unremitting attention to refining basic skills.

Information in Advance or Face-to-Face

I don't know about you, but I'm not wild about filling in forms to obtain a service, such as going to a doctor's office. Nonetheless, I find it enormously helpful and essential to identify the form of ownership and value of assets owned by a married couple who will be new clients. So, to make the process useful but relatively painless, I ask a prospective client to complete a form that lists categories of assets owned by either spouse or jointly. I usually add that approximate values are good enough, given that the asset picture amounts to a snapshot of a moment in time. I do ask that various types of retirement assets, such as IRAs, qualified plans, and nonqualified deferred annuities, be denoted as such. Also, it is essential to know the death benefit of any life insurance policies.

Regardless of whether federal estate taxation is a concern, I like to have a list of assets that would be a useful guide if estate tax planning is needed.

Categories of Assets

It is important in the interview to let clients know which assets will actually be governed by their wills. Assets owned jointly by husband and wife typically pass at a spouse's death by right of survivorship, apart from the terms of a will. In common law jurisdictions, spouses may own assets as tenants by the entirety or by right of survivorship. In other states, community property laws may be in place, and the fact-finding process must take that into account. For that matter, clients may move from a community property state and maintain that form of ownership even as they then reside in a common law state. So, it's worth spending at least a bit of time on personal history. Usually, a pattern of relocation will naturally surface in the interview, particularly if the clients have moved extensively because of their employment.

Beneficiary Designation Assets

For many people, the assets passing by beneficiary designation are a primary portion of their total worth. This is particularly true with professionals or executives who have large qualified plan or IRA balances but less value held in other investments. A key planning component is the contingent, or secondary, beneficiary designation. If the clients have gone to the trouble to establish trusts under their wills for minor children, the beneficiary designations should ensure that those assets wind up in the trusts after both parents die. At the same time, apart from trusts for minor children, careful thought is needed to decide whether certain assets might be better left to a beneficiary's direct ownership, rather than held in trust. This would be more the case when the children are already, say, in their 20s with trusts for them that might otherwise run to age 35. If those children are disciplined, they could stretch the distributions from an inherited IRA more effectively for their benefit than if the funds were paid to a trust.

Nonqualified deferred annuities are another asset for which the beneficiary designation is critical. While the decision to designate a trust or an individual such as an adult child, as secondary beneficiary, is similar to the decision for a qualified plan or IRA, different tax rules govern distributions after death for deferred annuities or qualified plans/IRAs. It may be that trust or estate attorneys who are less attuned to income tax planning may skate by the distinction, but a financial planner should be prepared to consider the income tax effect of each type of asset.

A "transfer on death" designation for an investment account or a "payable on death" designation for a bank account is a more insidious form of ownership that may easily be overlooked. I say insidious because, short of a consistently disciplined fact-finding process, these assets may be presumed to pass under the client's will. A major distinction applies here: Mutual funds and bank accounts owned outside of a retirement plan don't require a beneficiary designation to pass upon the death of their owner, in contrast with qualified plans, IRAs, and annuities. (Although, to be particularly particular, these assets could pass under will if payable to the owner's estate by default.) So, the best practice is to confirm whether an "on death" beneficiary designation applies for these assets. Otherwise, in some cases, such as a blended family resulting from second marriages, a best practice ignored can quickly deteriorate to worst practice if assets wind up where they were not intended to be.

Estate Planning Interview

As we consider how the estate planner might interview new clients, I will deal with certain patterns that are likely to surface. To begin with, the estate planning process is best broken down so that each order of death for a married couple is reviewed. By its nature, the estate planning is sequential—he dies, then she dies, or, surprise! She dies first. Human nature being what it is, clients often insert the prospect

of simultaneous death in the discussion. The clients' wills may be silent or may say that one spouse or the other may be presumed to die first in the event of a common disaster. While it should be dealt with, the statistical likelihood that simultaneous deaths will occur is much smaller than people often imagine.

For that matter, when a trust will be established, the possible sequence of deaths may bring us to the so-called apocalypse clause. There may be no apocalypse, but an odd chain of events may produce a situation in which there are no children or grandchildren remaining, only an assortment of relatives that were not originally contemplated to be estate beneficiaries. The trick here is to reach resolution without descending into a rabbit hole of details about an unlikely scenario. If a final distribution to the clients' siblings or nieces and nephews won't seal the outcome, a "next of kin" treatment will probably do—i.e., a default to relatives then entitled under state intestacy law. Not infrequently, the indifference to a very remote possibility may be jolted by a fervent wish to prevent benefiting the wrong relative. ("I don't care where it goes as long as it's not to your brother…")

In the course of dealing with the inevitable—death is a when, not an if—the estate planner and the clients may bounce from regarding highly probable events to entertaining the barely foreseeable. Other aspects of financial planning may contemplate a broad range of possible future events. Exercises such as Monte Carlo simulations for various investment results come to mind. While clients naturally view death as a remote event, the estate planner does not have that luxury. The estate plan must operate successfully if the client dies the week after the will is signed. The investment advisor may be excused from foreseeing a financial turn of events; the estate planner can't claim that the prospect of an early death could be overlooked, no matter how unlikely.

Selection of Fiduciaries

The process of identifying the key players to carry out the terms of the will deserves careful thought. Each spouse of a married couple generally names the other spouse as executor. If they have adult children, they might be contingent executors. However, it may be that the children are minors, or the adult children are not suitable as executors. Or, the client may not be married, nor have children, so whom to name then? An executor need not be a skilled professional familiar with estate planning but should be a responsible person of sound judgment. You know that friend who can't file taxes on time, who is usually a dollar short? That's not your executor. The executor need not be a boy scout or a girl scout but should be able to manage the completion of various tasks. Even at that, the executor will usually have the advice and comfort that an experienced attorney can provide, with delegation to others, such as an accountant, an investment manager, insurance agent, appraiser, Realtor, and others needed to get assets distributed to beneficiaries.

Clients with minor children may find the selection of a guardian to be a natural choice or an exceptionally difficult one. Sometimes the dilemma is finding a relative or friend who can stand in the parents' shoes with similar values. At other times, the hesitation stems from financial concerns. We typically include a provision in a trust for minor children that enables the trustee to distribute funds to guardians to purchase a new residence or expand an existing one in order to have sufficient room for the children.

The selection of a trustee—individual, corporate, or both—is an involved topic. Among other aspects, key thoughts to consider are the likely duration of the trust; does it end when a child becomes, say, age 35, or does it run on for a longer time, even to the next generation? A corresponding point that doesn't always receive a lot of attention is a succession plan for trustees: When can a trustee be removed, and by whom? Who is a successor trustee, and how does the trust maintain autonomy over a potentially long period? Trust design and trustee selection, of course, are major topics beyond the scope of this column. I emphasize trustee removal and succession only because these topics may not get the review they deserve in the discussion with clients.

Add Value to the Estate Plan

My reference to the estate planner encompasses several professions. Each professional specialty has its own vantage point. The client may finish the process with a transactional view: "Now I have a will," or, "I just bought a life insurance policy." However, the client is best served when the estate planner not only fulfills the primary function required but also uncovers an area or a topic that deserves further attention. Perhaps it brings the planner outside of his or her expertise. The planner spots the problem, but it may best be addressed by a professional from another discipline. You might call this process "flyby" financial planning. In viewing a list of assets, it may become apparent that an imbalance needs to be remedied. A business owner may have reinvested funds in the enterprise to the detriment of saving for retirement; life insurance needs may be overlooked; estate values may be substantial but lack liquidity; and oversized cash or checking accounts may signal the need for investment advice. Each of us in the planning process should provide what the client hires us to do, but the value to the client can be made greater if broader problems are uncovered and solved by the right expert. ■

Dennis C. Reardon, JD, LLM, CLU, ChFC, is the principal of Reardon & Associates, a law firm in Wayne, PA, where he specializes in tax matters related to estate, business, and compensation planning. He is a fellow of the American College of Trust and Estate Counsel and is a frequent speaker at professional meetings throughout the United States. He can be reached at DReardon@DReardonLaw.com.

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September 8, 2016 · 12:00 noon–1:00 p.m. ET
Uncovering Premium Dollars Using Qualified Plans
Webinar
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September 28, 2016 · 12:00 noon–1:00 p.m. ET
The Secondary Market for Life Insurance: Current Trends, New Applications
Webinar
Sponsored by Coventry

October 5, 2016 · 12:00 noon–1:00 p.m. ET
Your FSP Voluntary Group Disability Plan—Review of the Program and Benefits
Webinar
Sponsored by Ryan Insurance Strategy Consultants

October 11, 2016 · 12:00 noon–1:00 p.m. ET
Medicaid Estate Recovery Program and How to Protect Your Assets
Webinar
Sponsored by American Cancer Society

November 1, 2016 · 12:00 noon–1:00 p.m. ET
Topic: TBD
Webinar
Sponsored by Guardian

November 16, 2016 · 1:00 p.m.–3:10 p.m. ET
Topic: Supplemental Retirement Plans for Executives and Entrepreneurs
Video Teleconference

December 6, 2016 · 12:00 noon–1:00 p.m. ET
Topic: Social Security
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