



The Uber Version of Estate Planning for Seniors

Authors Martin Shenkman and Jonathan Blattmachr examine how estate planners can use technology as an important part of the planning team and render services that remain relevant to the large swath of aging clients who are indifferent to estate tax planning. Uber, Lyft, and other services and technologies could provide a model for service delivery for estate planners to aging and infirm clients.

Martin M. Shenkman, Esq. and Jonathan G. Blattmachr, Esq.

The Uber Version of Estate Planning for Seniors

Estate planners have focused considerable attention on planning for the Section 199A deduction, non-grantor trusts and the like after the 2017 Tax Act. However, scant if any attention has been focused on the evolution of aging clients and how estate planners can use technology to be a more substantial and important part of the planning team, render services that remain relevant to a large swath of aging clients who are indifferent to estate tax planning and just won't get excited about the latest mantra from the estate planning world "basis maximization." While most if not all readers have (or will!) use **Uber**, **Lyft** or other such services, how can these and other technologies provide a model for service delivery for estate planners to aging or infirm clients?

Why is this all so necessary? Estate taxes are irrelevant for most clients and that driver for business has largely dissipated. Document generation software is growing more sophisticated and more and more less experienced practitioners can create plans and draft documents that can replicate the results of what the most sophisticated practitioners can do. Artificial intelligence has barely nipped at the heels of planners, but in short order it will likely obviate many of the services and guidance clients have traditionally sought from practitioners. Estate planners can bellow about the merits maximizing the basis of assets transferred to family members (not to say that it is not important) but many clients don't care, and many if not most who do care still view income tax planning as in the purview of their CPA not their estate planner. That will not lessen the need to incorporate basis maximization planning in estate plans, but it does not seem that such income tax planning will ever be a driver to push clients to their estate planner's office. Aging clients do fear the impact of dementias, elder physical abuse, elder financial abuse, identity theft and more. Aging clients universally want to retain their independence. Estate planning, in a somewhat broader and more holistic manner, can help address these concerns.

Following is a blog post about seniors using Uber that can provide a construct that estate planners should all embrace:[2]

"Driving to the doctor, the supermarket, to visit friends or just to see the change in seasons through Mother Nature's eyes is something many of us take for granted. When our senior loved ones no longer drive, whether

they are no longer safe behind the wheel, choose to give up their keys, or can't afford to own a car, they still need to get from one place to another. How can they get to essential services like the grocery store or just to places that will help them enjoy life, like visiting friends or the ice cream shop, especially if they live in suburban or rural cities without a transportation infrastructure? Not being able to get where they need to go or having to rely on family or friends to get there, can rob seniors of their independence and maybe even the ability to age in place...Unfortunately, a large majority of community dwelling seniors have no access to public transportation or walkable city services and need to find a solution to meeting their needs without a car to rely on each day. It is estimated that by the age of 75, 31% of seniors need to find alternative forms of transportation because they no longer drive....There is a way for our senior loved ones to get on the road again! Yes, we are talking about Uber."

Uber is far from the only illustration of the growing sharing economy:[3]

- **Instacart** is the personal grocery shopping service that will deliver your grocery order to your door for a nominal fee. Consider seniors for whom travel is difficult, or because of arthritis or other challenges find mobility painful or too time consuming.
- **Poshmark** helps women monetize their closet and declutter at the same time. You can list gently used clothing items for sale in less than 60 seconds with their app. Consider the common and growing problem of seniors downsizing. This can provide a cost efficient and straightforward way to do so. Also, consider the financial challenges facing many clients with longevity.
- **Getaround** can make a client's car generate income when they are not driving it. Consider the oft discussed challenge for many aging clients of financial resources as longevity continues to expand. Perhaps that car the senior client cannot yet part with, but which is used less and less, can provide cash flow to offset its carrying cost.

Technology provides a range of benefits that can help both aging clients and their caregivers:[4]

- Technology can provide social connections. Video chat and social media can keep seniors in touch with long-distance loved ones. But how many estate planners schedule periodic reviews with clients? Those reviews could be about much more than just updating an estate plan, but rather to have an objective and independent attorney in effect checking in on a client, providing important social connection, and perhaps minimizing the risk of elder abuse. "Have you had your financial adviser or CPA automate your bill paying yet?" How does the client appear? Is there anything worrisome in the client's demeanor? The signs are no different than what any advisor on the planning team might consider in recommending an initial review by a care manager.
- Emergency equipment can be vital to the security of aging clients. Surveys consistently show that 80 to 90% of seniors want to stay in their own home as they age. Technological solutions can make doing so safer for them. Every senior that lives alone should have a Personal Emergency Response System (PERS).[5] **ADT**, for example, provides such devices. A PERS device allows the wearer to call for help with the simple push of a button. How many estate planners recommend this to clients that have health challenges and/or who are aging? If the estate planner is not having this type of frank discussion with the aging client who is? Too often, no one.

- According to a 2009 survey by Medco Health Solutions, more than half of the older adults took at least five different prescription drugs regularly, and 25% took between 10 and 19 pills a day. Technological solutions that also provide reminders and "time to refill" alerts can aid adherence to the prescribed medication schedule. Seniors and their caregivers can take advantage of the **RxmindMe** or **Personal Caregiver** medication reminder smartphone apps to reduce missed medications and prevent medication errors.

So, what do technology, Uber and other sharing economy solutions provide seniors, and how can estate planners adapt similar concepts to their practices to make matters easier?

- Minimize the need to drive to appointments.
- Address the reality that few clients return for annual reviews, which become more critical as clients age.
- Facilitate interaction and communication.
- Provide additional safety to aging or infirm clients.
- Assure coordination of a holistic estate planning team.
- Minimize or ease check writing and recordkeeping which become more difficult with aging.
- Make documents accessible to the client and others who need them in a manner that is convenient to an aging client who might have difficulty locating documents or transmitting them.

What are some of the specific ways estate planners can cost-effectively adapt some of these concepts to help aging and infirm clients? How can estate planners broaden the scope of services provided, better assist and protect aging clients, and more?

- Post short video clips explaining concepts and planning to clients and their loved ones on your website. These can be created inexpensively in the practitioner's office without the cost of expensive marketing and PR firms. These videos can explain the issues each practitioner sees his or her clients needing information on. Using video clips will be much easier for many clients to digest than the traditional newsletters and written materials. For an illustration see www.laweasy.com.
- Document management becomes increasingly difficult for seniors and can be simply resolved. For example, **ShareFile** provides a cost-efficient and simple means for an estate planner to create a secure password protected cloud vault for each client. PDFs of all key client documents can be uploaded to that vault. The client can choose which persons to share that password with. Practitioners can encourage clients to share the password with their wealth advisers and CPAs to foster collaboration, assure that clients can easily facilitate other advisers having documents, and avoid the need to copy, scan, email or otherwise do so themselves. For practitioners, this approach can virtually eliminate calls and emails by third parties requesting copies of documents. Those inquiries can raise issues of obtaining approvals to provide the documents and create time drains that are difficult to bill for.
- **ShareFile** has an app for smart phones which practitioners can make available to clients. If a client or client's spouse/partner is rushed to an emergency room, his or her health proxy and other key documents can readily be downloaded from their smart phone to provide to a hospital. Not only with this

capability give clients peace of mind but it will also eliminate the urgent document requests inquiries that can be difficult for practitioners to respond to.

- Web based meetings are a simple and cost-effective way to meet with clients to maintain communications and eliminate the need for clients to drive to the attorney's office or for the practitioner to drive to the client's home thereby increasing the cost of services. When a web-based meeting is combined with cameras, the visual makes the interaction more personal and provides much more insight to the practitioner (than a mere telephone call). These services are readily available from many providers and quite inexpensive. For example, **GoToMeeting** is a web-hosted service created and marketed by LogMeIn. It is an online meeting, desktop sharing, and video conferencing software package that enables the user to meet with other computer users, customers, clients or colleagues via the Internet in real time. 5 million seniors are subject to financial scams every year. While most perpetrators are family, friends or home health aides, scammers include fake lotteries, home improvement scams and more. The Feds passed "The Senior Safe Act." The theory is that financial advisers can spot signs of elder financial abuse. Advisers need protection from liability and violations of privacy if they alert authorities about potential fraud. FINRA Rules 2165 and 4512 became effective in 2018. Why shouldn't estate planners be part of this protective effort as well? By communicating through web conferences, visually seeing and hearing clients in their home environments, estate planners may identify issues that financial professionals who may only see clients in their offices, when they are groomed and perhaps rehearsed for the occasion, may miss.
- **GoToMeeting** can easily record a client meeting. Many practitioners have shied away from video recording of client meetings to confirm a client's dispositive intent or capacity. Videos can sometimes be picked apart by a forensic psychiatrist, are costly, and many clients are uncomfortable with formality. That discomfort can readily be translated into questionable capacity on the recording. But has anyone considered the impact of periodic recordings of a client on a web conference from the comfort of their home, at no cost? How might that translate into a different perspective on corroborating capacity or testamentary intent? (One option to ensure the client's wishes in his or her testamentary documents are carried out is to consider pre-mortem probate and declaration of validity of a revocable trust. But few have bothered to use it. More certainly should.)
- The voice recordings from a video conference can be quickly (10 minutes) transcribed and saved as a Word document using many inexpensive (10 cents per minute of transcription) web-based services, e.g. **Temi.com**. Consider how easy a written record of a client conference call or web meeting can be created to corroborate the discussions. If the practitioner wants to send a follow up letter to the client, it is quick and easy to copy and paste key points from the transcription into a confirming memorandum or letter. That same transcription, even in rough form, can be circulated to the advisor team to inform other advisers not on the call of the discussions.
- To foster collaboration of the planning team, vital to the protection of many aging clients or clients with health challenges such as cognitive issues or chronic disease, a web meeting of the advisers can be quick and cost-effective. It eliminates the costs of travel time being billed and the social niceties that precede any meeting but add to billable time to the client.
- Firms that do not take credit cards for payment should as it provides an easier means for an aging client to handle payments than writing checks.

Conclusion

There are many other ways practitioners can harness technology and other changes to better serve aging client, expand the services offered, make the delivery of even traditional services more elderly-friendly, and more. Each of these enhances the value offered to the aging client and will help keep the practitioner relevant and a value add that commoditized services cannot yet compete with. It is up to the practitioner to put himself or herself in a position to advise senior clients of these important options and to have the staff or referral sources to implement them.

[1] Martin M. Shenkman, Esq. is Co-Vice Chair of the Special Needs Planning Committee of the ABA Section of Real Property, Trust and Estate Law.

[2] Kathy Birkett, "Uber Can Give Seniors Their Wheels, Flexibility and Independence Back," <http://seniorcarecorner.com/uber-seniors-wheels-independence>, November 10, 2018.

[3] Nick Loper, "15 Apps That Let You Join the Sharing Economy," <https://www.lifehack.org/articles/technology/15-apps-that-let-you-join-the-sharing-economy.html> , November 10, 2018.

[4] "5 Benefits of Technology to Share with Seniors and Their Caregivers," <https://www.caregiverstress.com/geriatric-professional-resources/5-benefits-of-technology-to-share-with-seniors-and-their-caregivers/>, November 10, 2018.

[5] "Best Medical Alert Systems - November 2018," https://www.best10medicalalertsystems.com/?utm_source=google&kw=personal%20emergency%20response%20system&c=265742111227&t=search&p=&m=e&adpos=1t1&dev=c&devmod=&mobval=0&network=g&campaignid=362025071&adgroupid=58267178527&targetid=kwd-87883632&interest=&physical=9003430&feedid=&a=9911&ts=&gclid=EAIaIQobChMIp-uA vTJ3gIVm4WzCh3eQgKBAAAYASAAEgLqQvD BwE