Building Your Estate Planning Practice

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A KEY ESTATE PLANNING GUIDE

ChronicIllnessPlanning.org

Building Your Estate Planning Practice:

Marketing Services to Clients Not Paying Estate Tax

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Webinar

Speakers

- Martin Shenkman, Esq., and Valentino Sabuco, CFP®, Executive Director for The Financial Awareness Foundation that has helped pioneer the 'fee-only' financial planning profession over the last 40 years as a principle of CPA firms, through his private practice, syndicated columns, and publishing activities.

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- The Financial Awareness Foundation - http://www.thefinancialawarenessfoundation.org/index.html

Objectives

- This program is designed for practitioners (estate planners, attorneys, wealth advisers, insurance brokers, etc.) and will address how advisers can educate current and prospective clients on the importance of financial, and estate planning. This Webinar will present and discuss a consumer PowerPoint webinar which can be used in this process. The objective of the program will be to guide practitioners on how to market their services, especially at a time when many consumers mistakenly believe that estate planning is not relevant or not important because of the high tax exemptions.
- The handout materials include the actual PowerPoint which practitioners can customize and use in marketing their practices.
- Our co-sponsor The Financial Awareness Foundation is a 501(c)(3) nonprofit whose mission is to significantly help solve a major social problem dealing with a lack of financial awareness along with the financial illiteracy epidemic. They help motivate, educate and encourage consumers to get and keep their financial house in order by having current financial and estate plans. They'll introduce you to The Improving Financial Awareness & Financial Literacy Movement and share resources they make available to practitioners to help grow your practice while solving the financial illiteracy epidemic.
- Learn about The Improving Financial Awareness & Financial Literacy Movement

  1. The Improving Financial Awareness & Financial Literacy Movement Report & Magazine™

     http://www.thefinancialawarenessfoundation.org/pdf/TFAF-FallCampaignReport&Magazine.pdf

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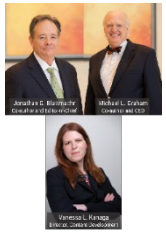

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Estate Planning in 14 Steps

For Consumers

(Not Subject to the Federal Estate Tax)

By: YOUR NAME/FIRM NAME

Caveat

- Nothing in these slides or any accompanying presentation is to be considered tax, legal, investment or other professional advice. The information is merely provided for educational purposes and no action should be taken without the individual consulting his or her own tax, estate, legal, financial, investment, insurance and other advisers.

What is Estate Tax Planning?

- Estate planning had often been focused on minimizing estate taxes which were viewed as potentially devastating 50% + of what wealth you accumulated. For most taxpayers this is no longer the case.
- For many consumers this translated into bypass trusts, marital trusts and insurance trusts. Even if these steps still make sense the focus of planning and application of those techniques has changed.
- Now only about 3,000 decedents a year will pay estate tax:
  - $10 million inflation adjusted exemption (2019 – an individual can give $11.4 million and a couple can bequeath $22,800,000 without federal estate tax).
  - **Caution**: Democratic Presidential hopefuls have proposed harsh changes that could reduce the gift exemption to $1 million and the estate tax exemption to $3.5 million ($2.5 million if you use the entire $1 million gift exemption). So all of this may change and many people may again need to address planning.
  - A surviving spouse can capture ("port") the exemption of the deceased spouse without a bypass trust.
- Wealthier taxpayers might use many different planning techniques to reduce possible estate taxes, but that is beyond the scope of this presentation.

What is Estate and Financial Planning?

- Providing peace of mind for you and your loved ones on a broad range of planning issues.
- Addressing human planning issues: religious considerations, health challenges, charitable giving, and much more.
- Financial planning, longevity planning and other financial decisions must lead most estate planning decisions. This includes investment planning, budgeting, and an array of different steps to holistically protect you and your loved ones.
- Protection from lawsuits, creditors, divorce, identity theft, and other predators.
- Insurance of varying types to meet many planning needs.
- An integrated plan that coordinates your investments, retirement, insurance, emergency and disability planning, and more while you are alive, if you are disabled, when or if you are retired, and eventually for your heirs, charities and others you wish to benefit.
- Maximize the increase in income tax basis (the amount on which capital gain is determined when an asset sold (called basis step-up) for income tax purposes.
- Dealing with incapacity, especially if you are a business owner.
- Estate planning will be different for each person and family. You have to define what “estate planning” means to you so that **YOUR** goals will be met.

Overview of Your Estate Planning – A Document Perspective

Powers of Attorney

- Springing vs. not.
- General vs. Special.
- Why standard forms aren't sufficient.
- Special provisions to include.

Living Wills

- What they are and why they are important.
- Address specific health and religious issues.

HIPAA Releases

Health Proxies

- Special considerations in selecting agent.

POLST

Insurance Trusts

- Multi-purpose ILIT or MILIT.

Wills and Revocable Living Trusts

- New Bypass trusts.
- Boilerplate forms rarely address nuances needed.
- What can and should you have.

How Financial and Estate Non-Tax Planning Have Changed

- **Technology has and is improving**
  - You can get a wealth of information and even legal documents on line, but how can you protect yourself from what is worthwhile and what isn't? As you will learn a document is only a part of what you will need.
- **More options**
  - There are many different types of financial advisers, trust companies and investment options.
  - These can be integrated with your estate planning and create safer and better results.
- **Demographic changes**
  - The aging population requires a focus on later life (longevity) planning to protect people as the age from elder financial abuse, identity theft, challenges of chronic disease and more.
  - 20% of boomers support an elderly parent, many support adult children. How does this impact your planning?
- **Diversity expanding**
  - Addressing different financial, religious and other considerations in planning and documents.

Income Tax Planning is Part of Financial and Estate Tax Planning

- The income tax is the new estate tax.
  - Saving estate tax is not the focus for even most wealthy people. Income tax planning is now a critical component of estate planning and you need the right professional guidance to take advantage of these opportunities. Everyone may benefit.
  - Capital gains costs to your heirs may outweigh state estate tax costs so maximizing "basis step-up" (adjust tax "cost" to fair value on death) may be more important than estate tax savings.
  - Do your LLCs and partnerships permit you to obtain a basis step up by making a 754 election?
  - Do your irrevocable trusts have swap powers?
  - Partnerships and irrevocable trusts can be used to shift income to lower bracket taxpayers (e.g. adult children not subject to the Kiddie Tax).

Introduction to the 14 Steps of Estate and Financial Planning

- Every person is unique – it has to be <u>your</u> plan and address <u>your</u> goals.
- Reflect your personal wishes and circumstances.
- Create a strong financial foundation, an integrated plan, and documents to build upon.

Step 1: Organize Emergency, Financial, Information and Advisors Information

- Contact People (names, numbers).
- Financial Information (account information).
- Passwords and Security Codes.
- Documents (Estate planning documents, legal documents, and more).
- Budget and Financial Plan.
- Tax Basis Information.

Investment and Financial Information is Critical to Organize and Communicate

- **Title to Accounts**
  - Your name alone.
  - Revocable trust.
  - Joint.
  - Other (POD, TOD, etc.)
- **Beneficiary designations**
  - Update for new laws (e.g. remove bypass trusts).
  - For your assets.
  - Should trusts be named?
  - Of others that benefit client living with chronic illness.
- **Account Management**
  - Duplicate statements.
  - Consolidation and simplification.
  - Asset location decisions.
  - Access to safe deposit box.
- **Automation**
  - Organizing records.
  - On line payments.
  - Automatic deposits.
  - Paperless.

Step 2: Designate a Person to Handle Financial and Legal Issues

Power of Attorney

- Agent (Successors).
- Compensation.
- Begin date (Trigger).
- Powers (Authority).
- Durability (Disability).

"A raise in my allowance is fine, dad. But what I'm really after is power of attorney."

Powers of Attorney Decisions

- Who should be named agent? What if you don't have reliable people? Worse, what if you think you have reliable people but you don't?
- Gift powers have been standard. Should they be? Might it be safer, to prevent elder financial abuse, to prohibit gifts?
- More complex tax powers for the wealthy and even others:
  - What about gifts of remaining gift tax exemption?
  - The right to continue your pattern of charitable giving?
- Consider practical steps to make the power of attorney effective.
  - Just having a document is not enough to protect you.
  - Consolidated and simplify financial holdings.
  - Organize and automate records.
  - Bills and deposits on automatic.

Step 3: Designate a Person to Make Health Care Decisions and Access Medical Records

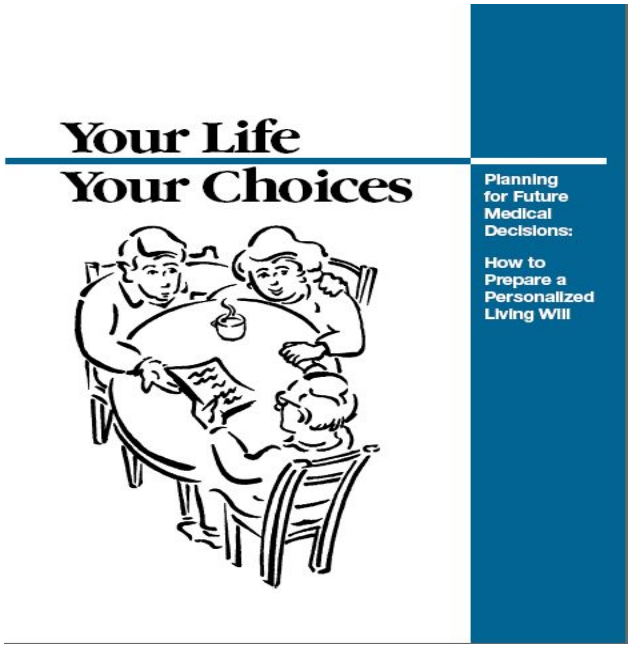
Health Care Proxy
Medical Power of Attorney

- Agent (successors).
- Powers (religion).
- Signature (State law).
- Move (state; facility).
- HIPAA Release.

ADAM.

Step 4: Other Health Care Documents

Prepare a Living Will



Health Care Document Considerations

- HIPAA Release (Health Insurance Portability Accountability Act) – authorizes someone to access medical records and speak with physicians.
- Living Wills – Statement of health care wishes.
  - Address end of life decision making, funeral/burial.
  - Organ donations.
  - Nutrition and hydration.
  - Specify religious considerations.
- POLST (Physician Order Life Sustaining Treatment) – permitted in more than 40 states. A statement in your patient chart prepared by your physician to govern end of life decisions.

Step 5: Planning For Minor Children

- Disclose a child's care information.
- Plan for medical emergencies.
- 529 plans.
- Trust for child in your will.

Planning For Children

- How do you define “children” in your legal documents? Does that include those you want, but exclude those you don’t want provided for? Consider adopted children, out of wedlock, reproductive technologies, etc.
- Should you take special precautions in your planning for a special needs child? Be certain planning for a special child contemplates your disability, the child’s unique circumstances, and potential changes.
- How do you plan for boomerang children (adult children who move back home)? Do you permit their support? How much? What about other children?
- How do you factor in current or future assistance for children (even adult children) into your financial plan?
- Do you have adequate life and disability insurance to protect your children?

Planning For Children

- Why ever set up a child or grandchild's trust? Does it ever make sense? In many cases a trust for your spouse/partner and all children and descendants may be more advantageous. Why leave out your spouse? What if you need access to the money?
- Modern trust drafting:
  - Create a dynastic trust to benefit spouse and all descendants. Why lose ability to benefit as it provides no tax or asset protection advantage?
  - Broad class of beneficiaries to maximize income tax shifting?
  - Creative use of general powers of appointment to maximize basis step up.
  - Powers of appointment, decanting provisions, trust protectors, and more techniques to add flexibility.
  - New positions/roles: trust protectors, loan directors, administrative trustees, etc.

Step 6: Sign a Will

A legal document to designate where your assets should be distributed in the event of death

Wills – Not The Only Document to Consider

- Most consumers focus on the contents of their wills. While this is appropriate for many people, consider that many (even most) of their assets may pass outside of their will. This could be based on:
  - Beneficiary designation forms (e.g., for your IRA and life insurance.)
  - On how accounts are owned (titled) (e.g., a bank account that is Pay On Death to a child, joint accounts, etc.)
  - On legal documents (e.g., a deed that has your house owned jointly with a spouse or an heir.)
- Coordinate all of these different "transfers" to be sure your intent is really met. This is just one critical example why merely procuring a will or other document often won't address your real planning needs. You need a more comprehensive approach.
- Few consumers understand the implications of title and beneficiary designations and too often neglect the importance of their other planning. Ideally, all of this should be confirmed and coordinated with your financial adviser/investment firms.

Wills – If Your Wealth Increases or Circumstances are Complex?

- Consider using a revocable trust as your primary document.
- Do not rely automatically on testamentary dispositions under your will. Consider instead making gifts or even creating more robust lifetime trusts in a trust friendly jurisdiction like Delaware.
- Bypass trusts – Consider new powers to distribute capital gains as part of trust accounting income, powers of appointment to cause estate tax inclusion, naming broader class of beneficiaries to shift income to lower brackets, and more.
- QTIP Trusts – plan for 2519 disclaimer, or even a so-called "Clayton QTIP" rather than disclaimer, for more flexibility and perhaps tax benefits.
- Investment allocation permitted to consider overall family investment allocation and tax status of each trust so can maximize tax and other benefits.

Step 7: Create a Revocable Living Trust

- Establish a personalized living trust.
- Transfer assets to a trust during your lifetime.
- Manage assets as you age or during disability or illness.
- It should be about much more than avoiding probate.

Step 8: Be Sure Your Insurance Coverage is in Order

- Property and casualty insurance.
- Liability insurance.
- Long term care coverage.
- Disability income replacement.
- Life insurance.
- Liability.

Life Insurance

- Do you have a reasonable amount of life insurance to cover your real needs? Too much diverts money that you could add to savings. Too little may leave your loved ones in financial hardship.
- Your circumstances and needs change over time. Review existing policies and coverages with an insurance expert. Do they still meet your current needs? Can you change them to better serve your goals?
- Consider using permanent life insurance as an asset class – part of your investment strategy + income tax benefits.
- Long-Term care coverage may be a special type of life insurance policy.
- Other creative uses of life insurance.

Life Insurance Trust

- Life insurance coverage on your life could be part of a plan to protect your assets, your spouse/partner, or others.
- Life Insurance Trust:
  - Life insurance, because of the dollars of coverage and importance often should be held in a trust to protect it.
  - Instead of a simple life insurance trust use a more robust trust that accomplishes multiple goals, a **M**ulti-purpose **I**rrevocable **L**ife Insurance **T**rust.
  - Simplified Crummey powers.
  - Hold other assets in the same trust. Income from those assets can be used to pay insurance premiums.
  - Asset protection when it is really needed.
- Review and repurpose existing policies and ILITs.

Step 9: Beneficiary Designations

- Standard provisions are not always adequate.
- Coordinate with Revocable Trust.
- What powers should agent have.
- Give copies to your advisers.
- Update when banks merge.
- Revise when tax laws change.
- Should you ever name bypass trust.
- 5-10 year payout may become law.

Step 10: Matrimonial Planning

- Protect heirs with trusts instead of outright gifts or bequests.
- Create or review prenuptial agreements.

Step 11: Business Planning

- Proper entities to minimize liability exposure for personal assets.
- Business formalities.
- Succession planning.
- Integrate planning for your business into your estate plan.

Step 12: Give Back

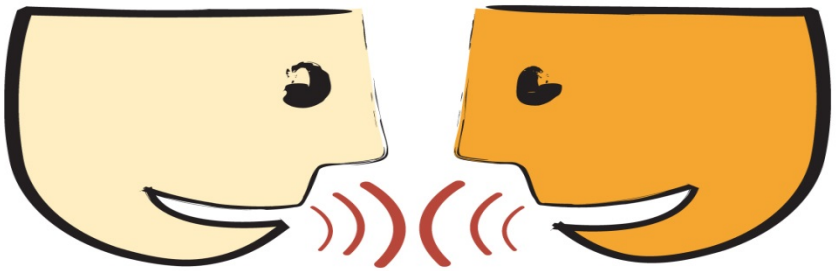
- Demonstrate important values to heirs.
- Thank those that have helped.
- Inspire others to give.

Charitable Giving Should be About More than Taxes

- Giving back, by volunteering, donating things you don't need, writing a check, or using more sophisticated techniques.
- Permit trustees and agents to make contributions to teach values to heirs.
- Harvesting gains and losses each year to minimize the amount taxable.
- 2 Generation CRUT for IRA.
- Why ever make a bequest under your will to charity? It might be a good way to demonstrate values for your heirs but giving while you are alive may generate a better tax break.

Step 13: Communicate

- Educate and inform your fiduciaries (agents, trustees).
- Preparation of beneficiaries.
- Advisory team must cooperate.



Having a real conversation is one of the most important steps you can take

Communication

- Family, loved ones, people you named to fiduciary positions – all need to be informed of your plan and understand its relevance to them.
- A team approach is more vital than ever before – especially for those advancing in years or facing a health challenge.
- If you cannot afford a meeting with a CPA, attorney, investment adviser and insurance consultant you can achieve similar results in an affordable manner.
- Integrated planning is the only approach to succeed.
- Every adviser brings something to the table.
- Everyone at every wealth level needs checks and balances. Use advisers, family members, etc.
- Planning is more complex than ever before so efficient planning team operation is vital.
- Broaden the concept of who should be part of your team.

Step 14: Review, Revisit, Revise

- Nothing remains static
  - Tax and property laws.
  - Family situations.
  - Assets and net worth.
  - Health.
  - Feelings.

Annual Reviews with your Team are Vital

- All insurance must be reviewed and managed.
- If you have a bad egg as an agent or adviser it is the regular interaction of your team that will help identify it.
- Coordinating the complex interplay of income and estate taxes, asset protection, and other goals will never work without regular checkups – this is important especially for those with lesser wealth since a loss will have a more adverse impact.
- You change oil every 5,000 miles and go to your doctor for an annual physical, you had best meet your advisers once a year too.
- Web meetings and other technology can make it quite cost effective.

Make an Action Plan

And Get Started.

Action Steps

- If you haven’t met with your CPA to discuss anything other than a tax return in the last year, call him/her now.
- If your life insurance has not been reviewed in two years, call your insurance agent.
- Do you know what your beneficiary designations say? Do you have current copies?
- If you have not updated all of your estate planning documents in the past two years, you’re overdue for a review.
- Have you reviewed all existing/old entities and trusts?
- Have you considered practical steps to make your documents function?

For More Information

- Your contact data here.