

The CPA's Role In Protecting Aging or Incapacitated Individuals

By Martin M. Shenkman

The U.S. population is aging, and CPAs should consider this fact in determining which services they can offer and how they will adapt their practices to assist this growing client segment. "In 2019, the 65–74 age group (31.5 million) was more than 14 times larger than in 1900 (2,186,767); the 75–84 group (16 million) was 20 times larger (771,369), and the 85+ group (6.6 million) was more than 53 times larger (122,362). In 2019, 3.8 million persons celebrated their 65th birthdays" ("2020 Profile of Older Americans, May 2021," <https://bit.ly/3g3J8ZX>). "The 85-and-older population is projected to more than double from 6.6 million in 2019 to 14.4 million in 2040 (a 118% increase)." Which types of services might these clients benefit from, and what might CPAs consider doing to address those needs? Most of these services—even those founded on basic, routine, and low-cost work—share common value-added elements that can be billed appropriately. Although many of the points following may seem obvious, too often even the basic steps are overlooked by aging clients.

Challenges of Aging Individuals

Aging individuals face a host of challenges that are either unique to aging or more challenging for those of more advanced age.

■ *Financial elder abuse is burgeoning.* Among older adults, 5% have reported financial elder abuse; 90% of perpetrators of elder financial abuse are family members or other trusted acquaintances ("Financial Elder Abuse," <https://bit.ly/3CZ6gBT>, Jun. 24, 2021).

■ *The statistics on elder abuse are staggering.* "Up to 5 million older Americans are abused every year, and the annual loss by victims of financial abuse is estimated to be at least \$36.5 billion." ("Get the Facts on Elder Abuse," Feb. 23, 2021, <https://bit.ly/3TkaZ6s>)

■ *Identity theft poses a significant and growing risk.* There were 4.8 million identity thefts and credit card frauds reported to the Federal Trade Commission (FTC) in 2020, resulting in a total of \$4.5 billion in losses. This represents a 45% increase over the number of cases and money lost in 2019 (Taylor Schulte, "Identity Theft and Credit Card Fraud Statistics 2022," Jan. 10, 2022, <https://bit.ly/3VvrSx2>).

Estate Planning Services

There are a host of services needed for aging clients. Estate planning is certainly critical and the most obvious. Estate planning is not only for the very wealthy; even clients of modest means need key documents that CPAs are familiar with, such as powers of attorney for financial matters, as well as healthcare decision-making documents including healthcare proxies, wills, and revocable trusts. Many aging individuals lack basic important documents, or have not updated them in years or even decades. Although clients with more wealth have existing irrevocable trusts, even the CPA filing the income tax returns for those trusts often lacks a complete file (e.g., a fully signed trust, funding information, full balance sheet, listing of all fiduciaries, actions that may have occurred in the past modifying the trust).



Despite the large federal estate tax exemptions in place today, taxpayers could benefit from a review of their plans. Many existing credit shelter trusts were formed when the estate tax exemptions were much lower, and they may now provide no estate tax benefit or actually result in a loss of the step-up in basis. Such trusts might be better terminated. Numerous trusts created for children, life insurance trusts, and other common irrevocable trusts were drafted long ago when it was common to have trusts terminate when the beneficiaries reach some stated age (e.g., 30). Distribution at mandated ages can undermine tax and asset protective benefits; often, the beneficiaries are well beyond the age indicated. These trusts might simply be terminated, or perhaps decanted (merged) into more protective trusts. For clients potentially facing state or federal taxation, especially due to the federal estate tax exemption being cut in half in 2026, planning to reduce those potential taxes may be advisable.

This is not a matter solely within the purview of the client's attorney. Most individuals do not return to see their estate planning attorney for years. CPAs have meaningful contact with clients every year when preparing tax returns. Tax preparers can use that opportunity, especially for older clients, to introduce a discussion of estate planning. CPAs may have more contact with clients and greater familiarity with their family to discuss who is appropriate to name in various fiduciary capacities, such as a financial agent under a power of attorney. The mere fact that the CPA will not draft documents and the client's attorney will have to does not eliminate the importance of the accountant's role in this process.

Many individuals seem to pay too little attention to how their irrevocable trusts are administered. Proper administration is essential for trusts to achieve individuals' tax and asset protection goals. CPAs can and should play a more active role in trust administration. Tax compliance is only a small

part of that process. In the recent case of *Smaldino v. Commissioner* (T.C. Memo, 2021-127, Nov. 10, 2021), the court hammered the taxpayer for failing to address a long list of formalities in trust administration and estate planning: allocating income to each partner for the correct period of time when they were a partner, proper reporting of ownership interests on income tax returns (Form K-1) and the gift tax return, amending the operating agreement for the period each person was a member, and more. (Although drafting that agreement is within the purview of counsel, making sure this is addressed is certainly appropriate for CPAs.)

Other Services

As individuals age, the risks of elder financial abuse, identity theft, and other problems grow more acute. As managing one's finances becomes more difficult, CPAs might offer a growing array of services to such clients, perhaps starting with bill paying but expanding to reporting of bill paying and bank reconciliations to not only the client but to the successor trustee of the client's revocable trust, the agent under the client's durable power of attorney, or other parties.

A common cause of the financial issues aging clients face is that key decision makers (e.g., successor agents), family members, and others are not provided with the relevant information. A typical source of family legal battles is heirs feeling someone has misappropriated funds when in reality the problem is a lack of financial disclosure. These issues should be addressed in advance—who will keep what records, which will be prepared professionally by the CPA firm, and who should get what types of disclosures. Planning and implementing these steps should be a role largely provided by the client's CPA firm, in coordination with estate planning counsel.

The role of the CPA can expand. For example, financial abuse by agents misusing powers of attorney is common

(<https://bit.ly/3MzE4bL>). A step to rein in that abuse is to name a person in the power of attorney called a monitor who is given the power to monitor the actions of the agent. A CPA might be the ideal person to either serve in that role or actively assist the named monitor.

Another role growing in use and importance is "trust protector." This is a person appointed in a trust (it can be done in an estate as an "estate protector") who is given authority to demand an accounting from the trustee, terminate and replace the trustee, and certain other actions. Many clients name their independent CPA in that role. CPAs should consider who in the firm should be allowed to serve in that role, and which types of fees should be charged. Because this is certainly a value-added service that brings with it liability exposure, it should be billed accordingly. Which types of checklists of steps should be developed for professionals serving in either of these capacities? If partners serve as trust protectors or fiduciaries (e.g., trustees) do the fees paid for such services to belong to the firm, or are they deemed private earnings of the partner?

Instituting checks and balances is a valuable safeguard for aging clients. Wealthy clients, as well as many mass affluent clients, can and should be willing to pay for the protection of these services. While they may begin as mere bookkeeping services, these activities should grow into more important, and profitable services, as clients age.

Broadening Services

CPAs can and should play a more active role in helping clients as they age by providing a broader array of relevant services. This expansion of activities can be profitable, build strong relationships with current clients and their heirs, and help mitigate the risks everyone faces as they age. ■

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