

INTRODUCTION

ESTATE PLANNING - THE PROCESS

The purpose of this booklet is to serve as a guide and a reference as you work through the issues in structuring your estate plan. Initially when I noted recurring issues in my clients' estate planning, I wrote a newsletter to send to my clients and to give new clients to explain certain issues. Some of the first newsletters covered areas such as asset preservation, disability and the use of an Executor's letter. The newsletters expanded to cover common tax related planning issues such as the use of family limited partnerships, irrevocable life insurance trusts and generation skipping trusts. However, I wanted to provide a more comprehensive guide for my clients to use as they are contemplating their own estate planning needs.

When I began practicing in this area over twenty years ago, I thought of estate planning as a Will. I thought of the key issues being tax issues. One of my primary objectives was to explain to my clients the tax laws which would impact my client's personal estate plan. The tax laws that impact estate planning are

..The estate plan is a process which is a part of our life when we first consider what we want to leave to whom and what impact we want that to have. .

complex. And, with each change in the law they become even more complex. In every taxable estate you can save from thousands to millions of dollars with proper estate planning. Understanding tax law is important for two reasons. First, estate planning touches the most personal aspects of our lives. We do not want to be "tax smart" at the expense of

our families. Secondly, the more we understand how tax laws work and what some of our options are, the more creative the process.

In our initial meeting and in subsequent meetings, we discuss various aspects of the tax law. One of my objectives is to explain how certain areas of the tax law impact your plan. I realize that the volume of new information cannot be completely assimilated. In a few days (or a few hours) and certainly in a few weeks, the impact of a particular tax provision becomes murky. One of my objectives in writing this booklet is to discuss some of the basic tax areas which impact estate plans. This booklet will serve as a reference guide while we are working on your plan and for use in the future as you review your estate plan.

But an estate plan is not just a Will and the issues are not just tax issues. Estate planning includes every aspect of our

lives - financial, personal, family. These aspects are the most personal, the most private parts of our lives. They are all relevant. They are not simple. They are infused with the complexity and richness of our lives - our pride, our fears. In our estate plan, we sit down to write out our legacy. We sit down in a meeting with an attorney, frequently someone we do not know. Perhaps our intent is to write a Will and in one brief meeting we decide how to structure this legacy.

Our Will frequently provides for the disposition of our property in a "tax advantageous manner." But does it reflect and perpetuate, the legacy we have begun in living our lives and in raising our children? My purpose in writing this booklet is to provide some guidance in considering our legacy. Essentially I think this is a process of becoming conscious of the legacy we are living and are leaving. To articulate what that legacy is.

So in part, I am writing this booklet to tell you what you have taught me. I have learned much from my clients. I want to collect the thoughts of my clients as a springboard for the formulation of your own personal estate plan.

I have called this book "Estate Planning - the Process" to reflect that it is not a static matter, not a document written after a single meeting with an attorney. Estate planning is a part of what you do every day in the way you live and in the way you raise your children. As you become aware of that, your Will and other estate planning documents will more accurately reflect that legacy.

How do we begin this process?

Seven Habits Applied to Estate Planning

Several years ago when I first read the Seven Habits of Highly Effective People by Stephen Covey I thought that the habits outlined a general approach to estate planning, or at least the way estate planning could effectively be approached. As you read this guidebook you will see

The more you consider your objectives, the more the plan is refined and the more the plan reflects your personal values and desires.

evidences of these habits sprinkled throughout the discussions. However, an overview of the concepts is useful in giving you a framework for your review and action on your estate plan.

HABITS 1-3 - CREATING THE PLAN

The first three habits are our personal side. They represent our thoughts, our action. This part of our estate planning will carry us through the preparation of our Will and other estate planning documents. The second three habits are the relationship side which include our families. The last habit is simply to keep the process going.

► Be Proactive

Take affirmative action. For me, the easiest way to think of being proactive is to think of it as the opposite of being

reactive. A reaction is the immediate response to a stimulus. Covey says that freedom is the gap between stimulus and response. A truly reactive approach is to have a Will drawn when death is imminent, or even worse, to leave it to our heirs to work out with no Will. A more productive reactive approach to estate planning would be to have a will drawn "to avoid probate". This reason may be the motivating force but if no further thought goes into the decision to have a Will, the Will is a reactive response to estate planning. What is a "proactive" response? A proactive response in estate planning is to considering the goal you want to achieve in 20 years, to consider your legacy and to take the steps necessary to effectuate this legacy.

► **Begin with the End in Mind**

In order to reach our destination, we have to know where we are going. In order to accomplish our objectives, we first need to know what our objectives are. In estate planning there are several components. Part of our objective is the amount of money we want to leave to our children. We need to know how much we want to leave before we can structure an estate plan to accomplish that objective. We also have broader, "softer" objectives, such as raising productive children, raising children with high self

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esteem. Both the financial objectives and the less tangible, personal objectives are part of our objectives in estate planning.

First, consider the legacy you want to leave upon your death, both financial and personal. In *First Things First*, Stephen Covey begins the process of setting priorities by looking at where we are headed. As a part of that process, he recommends that we imagine our own funeral and what might be said. To take that process one step further, in estate planning, we imagine that we have died and decide what we want done with our property - not just to whom we give it but how it is to be given. Is it given outright or in trust? Are there conditions on the receipt of the property? What do we hope will be done with the property we leave; what do we fear will be done with the property? Do we feel that our property can be left to our children, our families in a way that meets our objectives - to give them security, to educate them, to support them, to facilitate their independence?

► **First Things First**

Putting first things first is the day to day system of keeping your priorities in mind. In estate planning we sometimes talk

Keep in mind your overall objectives, the personal side, the human side, the relationship side.

about keeping the "tax tail from wagging the dog". In keeping first things first, keep in mind your overall objectives, the personal side, the human side, the relationship side, as well as the tax side in proceeding through your estate plan.

As we examine this process, our values are clarified, our objectives formulated. The process of thinking through our objectives, where we are going and what we want done, inevitably leads us back to where we are now and what we are doing today. This process is more than a Will; more than a power of attorney; more than a trust; more than any estate planning document. Yet the documents which are prepared as a result of this process help ensure that our objectives will be carried out.

What if you tell your attorney no more than the names of your spouse and your children and that you want to give it all to your family and from this information,

You are the primary player, informer and participant in this process. The attorney is a facilitator, teacher and technician.

your attorney prepares your Will. Is this Will actually your estate plan? Yes, it is. It has provided for the disposition of your estate in the manner that you want. If you expressed concern over the taxes that will be owed upon your death, the Will probably includes some basic tax planning which will be discussed in this booklet.

But, what have you missed? The plan provides for the aspects about which you have given thought. In my example, very little thought was given. Understandably, the more you consider your objectives, the more the plan is refined and the more the plan reflects your personal values and desires. Generally, the changes to the documents become more subtle as the

process is further refined. Many of the refinements and considerations may not even become specific provisions in the documents.

The refinements may be contained in your Executor's letter or other memos you write as a part of your plan. You may not change the structure of your plan but may change the persons you select as trustee, guardian or executor. You are the primary player, informer and participant in this process. The attorney is a facilitator, teacher and technician.

While reading though this guidebook, I recommend that you do so with a pen and a pad of paper. You can write notes in the margins of the book when a thought occurs to you with regard to your situation, your estate plan. If the thoughts are more lengthy, jot them on the paper. These notes will be the springboard for your own estate plan. They will start the process. Share these thoughts, concerns and ideas with your attorney. Some of the thoughts will result in a change in the structure of your estate plan. Others will be incorporated in the Executor's letter discussed in the last section of this guide book.

HABITS 4-6 - THE INTERPERSONAL SIDE

Most estate planning begins and ends with a Will. Actually 70% of the people in

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the United States die without a Will, so frequently the estate plan does not even reach the first step. The stimulus, a trip, an illness, an article does not even lead to the reactive response of preparing a Will. To schedule a meeting with an attorney means you have moved beyond the reactive stage. In the first twenty years of practice I focused on the first three steps. I focused on the overall objectives of my clients, both personal and financial, and sought to create a plan which would carry out these objectives. I have come to realize that a truly effective estate plan also involves not only our spouses, but also our children, our families. Estate planning is truly a relationship process.

► **Think Win/Win**

The parties in our win/win scenario are you and your family. Win/win means that you and your family agree on the actions

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to accomplish your objectives. Addressing and working through the first three habits is the first essential step. You must be clear on your objectives. *You* define your objectives and work through the process and then involve your family. The next phase of your estate plan is to involve your family. Information is the first step. Involvement is the second step.

Providing your family with information about your plan may result in increased tension and conflict. Being open, discussing issues can be uncomfortable. We would rather avoid this type of situation. However, if the discussion does generate tension and conflict, the tension and conflict was already there. I read once that the person who points out the conflict is perceived as creating the conflict. The truth is, pointing out the conflict, airing the conflict, is the first step to eliminating the conflict. If any discussion will generate tension or conflict, I can guarantee you that the tension and conflict is only a fraction of the tension and conflict which will be felt upon your death if you do not discuss the issue. By simply being open about our plan, we begin to minimize the conflict for our families later.

The second part of win/win is to involve your family. If your family is part of the process, participates in the decisions to accomplish your objectives, the result is win/win.

Frequently there is a hesitance to involve the family. Sometimes the reluctance is well placed since the family does not have a basis for communication. However, this process can be the first step in establishing significant communication and personal bonds in the family. When the parent attempts to control the family through his/her actions the children act in a certain way solely as

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a reaction to his/her parents. The children then are stuck before they ever reach the first step of proactivity in their own lives. In addition, children sometimes consciously or unconsciously count on their inheritance and/or their parents' benevolence or "compassion". They do not take responsibility for their own lives and seek to be bailed out by their parents or put their lives on hold waiting for their inheritance. Interestingly, this process is frequently unconscious. The child is not even aware that he/she is "on hold" until the process of involvement begins. Involving your children in your estate plan is empowering not only to your children in their own lives, but to you in accomplishing your objectives.

► **First Seek to Understand and then to be Understood**

In order to create a win/win situation you must understand the other individual's position, perspective. We think of our role with our children as being one of teacher, but we may not know what they are seeking to learn. We may not know

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what their way of learning is. We may not even define "productive" or "self esteem" the same way. Investing our energy in listening can enable our children to invest their energy in action rather than in maintaining a facade for our viewing.

The second part of this habit is "then to be understood". By first listening and

understanding our children's perspective, we can better express our concerns, desires, dreams, objectives in a way that our children can understand.

► **Synergize**

I think of this habit as an outgrowth of habits four and five, but it involves an extension of that process. In thinking win/win and in seeking first to understand

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and then to be understood we have developed a basis for communication with our children. We can then "brainstorm" freely, without judgment. Coming up with different ideas, some of which will not be used and some which will, but all accepted as ideas without judgment. The brainstorming, is synergistic, the result is a synergy.

► **Sharpen the Saw**

In Covey's seven habits, sharpening the saw is personal renewal, physical, spiritual, mental and social/emotional. In estate planning, the saw is sharpened by revisiting the process, by loving and living your estate plan. You have the personal time with your family which is not related to your estate plan. You review your overall objectives periodically to modify them as you and your family grows, matures, evolves.