ASSET ALIGNMENT AND YOUR ESTATE PLAN

Even if you have the best, most up-to-date estate planning documents consistent with your wishes, your plan will likely fail without proper asset alignment. Discover how important the correct titling of assets, financial accounts and beneficiary designations are to the success of your plan.

Kenneth J. Simmons, Jr. & Marco A. Schiavo
with Craig R. Hersch

THE FAMILY ESTATE & LEGACY PROGRAM®
Expertise. Confidence. Clarity.

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Preface

A Client Complaint

You hope to never have client complaints. Yet being human and having decades of experience, you come to realize that every now and then a misunderstanding occurs. Rather than getting defensive, however, you strive to turn complaints into learning opportunities.

This was one such event:

A very nice physician, a client for more than a decade, bristled when we asked her to provide us all her bank and financial account statements, deeds, closely held company legal documents and a host of other asset related information. "Why do you need all of that?" she asserted. "That's really none of your business."

In fact, that ***IS exactly our business!***

You see, an estate plan is not complete until we properly align (or connect) a client's assets with their plan.

A revocable living trust, for example, is designed to avoid court processes in the event that our client becomes mentally incapacitated or dies.

In the case of mental incapacitation, absent a revocable living trust or a durable power of attorney, or both, a court supervised legal guardianship process is required to manage the client's financial and legal affairs. Guardianships are expensive, cumbersome and can be a rather humiliating public process that is otherwise easily avoided.

Easily avoided, that is, provided that the client has the right legal documents ***and*** her assets are properly titled.

In the case of death, absent a fully funded revocable living trust and correlated beneficiary designations, a court probate process is likely necessary to distribute the assets in accordance with the client's wishes. Probates can be an expensive and cumbersome process that is largely available for the public to examine, especially now that most probate court records are accessible online. In today's age of identity theft and cybersecurity, anyone with a reasonable degree of net worth should avoid public exposure of her last wishes and asset information. Unfortunately, that's exactly what the probate process is.

But that's precisely what will happen without the right legal documents ***and*** the correct titling of assets, financial accounts and beneficiary designations.

Notice in both incapacity and death we mention the proper titling of your accounts (asset alignment), along with the right legal documents, as integral to the success of the plan. That's the point of this book. We plan to educate you in these pages as to precisely what we mean by asset alignment.

In the case of our physician client, once she understood how important asset alignment is, she readily provided us the information we needed to complete her estate plan. In fact, the issues we encountered with her lead us to improve our estate planning process. We now have an asset alignment conference with our estate planning clients to ensure everything is properly completed.

This points out an important differentiator between our firm and others. In our view, attorneys who don't take the steps necessary to assist clients in aligning their assets (i.e. transferring the real estate, investments and bank accounts into their clients' trusts, or ensuring that their beneficiary designations match what they are trying to accomplish within their estate plan), are only doing half the job.

What many estate planning attorneys do, including what our firm used to do, is hand clients a funding instruction sheet, leaving it up to the client to work with their banks and brokerage firms to transfer the accounts into the trust on their own.

Over time we found that one of three things resulted from handing a client a simple funding instruction sheet. Either the client never got around to it, did half a job himself or did it incorrectly. We'll delve more into these issues in the following chapters.

Why do so many law firms only do half the job? Primarily it is due to the time and cost associated with aligning the clients' assets with their estate plans. Completing all the bank and brokerage ownership and beneficiary forms is tedious and time consuming. Each financial institution has its own forms with different requirements and these requirements are constantly changing.

To do the job right, there is an investment on our part into our firm and our process, which does add additional overhead that we obviously must build into the price of our services.

While some new clients, like our physician client, initially question the need to include funding into the estate planning process, once they understand how important it is and see how complicated it can be, and therefore how extensive and complete our work is, they're almost always extremely grateful that our team took care of everything. To that end we've created a sub-process within our trademarked The Family Estate & Legacy Program®, that includes special client funding meetings to ensure that everything is placed in the right basket. This works together with The Family Estate & Legacy Advisor Coordinator™ so your legal and financial team work together to accomplish your goals.

You'll read more about those processes in the Epilogue to this book.

Moreover, The Family Estate & Legacy Client Care Program™, which is the seventh and last estate planning module, includes ongoing asset alignment for our clients as they open new accounts or acquire new properties. We find that nothing ever stays static and most of our clients' asset and financial situations change significantly over the years. The Family Estate & Legacy Client Care Program™ is designed to be a cost-effective way to keep your asset alignment, among other things, up to date as you experience such changes.

We hope that within these pages you gain a deeper understanding of why the importance of properly aligning your assets is so important to your estate plan. When you construct your estate plan under The Family Estate & Legacy Program®, you can rest assured that your job will be complete.

Since we are Massachusetts attorneys, this book is written with Massachusetts law in mind. Each state's laws are different, so you will want to check with a qualified lawyer in your jurisdiction before acting. This book is not intended to convey specific legal advice to you or to form an attorney-client relationship. No such relationship can be formed with us or with our firm without a written engagement agreement. Therefore, any email, telephone, written, or other communication with my office prior to a formal engagement would generally not be governed by any attorney-client privilege.

While every effort was made to convey current information at the time that we wrote these chapters, the laws change constantly. Because we intended for this book to be a broad overview of the asset alignment issues that clients face when creating an estate plan that includes a revocable trust, we intentionally omitted many of the details, caveats, and exceptions to the general rules that may apply to specific situations.

We welcome your comments, questions, and criticisms—and especially your kudos! Feel free to reach us at:

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Chapter One

When Does a Trust Not Avoid Probate?

As a part of our client intake system, we ask for any new client to complete an organizer that details their assets, including information on how those assets are owned, along with a copy of any existing estate planning documents they currently have (which many times are about 20 years old).

Anecdotally, we estimate that more than 85% of our new clients who already have revocable trusts do not have them fully funded when we first visit with them. Here's a conversation that we recently had with a married couple, who we will refer to as Bruce and Robin:

"You realize that you've never funded your trusts?" we asked.

Bruce and Robin quizzically looked at us, "What do you mean by funded?" Bruce asked.

"Transferred title of your bank and brokerage accounts as well as your real estate into your trusts," we replied.

"I thought our attorney took care of that," Robin said.

"No," Bruce replied, "remember he gave us that sheet that told us what to do."

Robin agreed, "Oh yes, I remember! Didn't we ask Alfred to do that for us?"

"Who's Alfred?" we asked.

"Alfred is our financial planner" Robin informed. "But I suppose he never got around to it."

"Even if Alfred finished the job with your investment accounts, what about your real estate, business holdings, bank accounts and certificates of deposit?" we asked.

"Good point," Bruce replied. "Can't we just transfer our assets into our trust when we die?"

"If your assets are in your individual name at the time of your death they'll be subject to the probate process through your pour-over will," we said. "You might as well not have a trust if that's what's going to happen. You could have accomplished all your planning in your will. But avoiding probate is a key benefit to having a trust. Also, your trust is there to assist your successor trustee if you should become disabled," we continued, "and if the assets aren't in the trust at that time it does you no good."

That conversation with Bruce and Robin is not uncommon. Many attorneys draft revocable trusts only to leave it up to their clients to actually transfer title to the assets and fund the trust. Listing the assets on a trust schedule doesn't accomplish funding. Instead, the actual title to the account must be transferred.

Consider This

To transfer title of a bank or brokerage account to a trust, the account title must change to name the trustee of the trust, the name of the trust and the date of the trust. An example would look like this: An account in the name of "Bruce Wayne" would instead by retitled to: "Bruce Wayne, Trustee for the Bruce Wayne Trust dated May 29, 2018." Sometimes who the trust benefits is also included in the title using the acronym f/b/o which stands for "for the benefit of." Consequently, the new title to a bank account in this instance might read "Bruce Wayne, Trustee for the Bruce Wayne Revocable Living Trust dated May 29, 2018 f/b/o Bruce Wayne."

Retitling bank and brokerage accounts usually involves completing a change of ownership form. Each financial institution has its own form. Sometimes the form requires a notary and other times it requires something known as a medallion signature guarantee, a special signature guarantee for the transfer of securities. It is a guarantee that the signature is genuine and the financial institution issuing it accepts liability for any forgery.

Pour-Over Will

Many clients are confused between the functions of a will and those of a revocable living trust. Whenever you have a revocable trust you typically also have a pour-over will. A pour-over will acts like a safety net, catching any assets in your name at the time of your death and, through the probate process, transferring them for ultimate distribution into your trust.

Because an attribute of your trust is to avoid probate for the assets funded into the trust, having a pour-over will catch assets is not ideal. You want all the assets that would otherwise be subject to probate to be titled into your trust prior to your death so the pour-over will does not have anything to catch and distribute.

Without a pour-over will those assets are subject to your state law's intestacy statutes for distribution, which likely differ greatly from the disposition called for under the terms of your trust.

Disability Benefits

In addition to avoiding probate, an often-overlooked benefit to having a revocable living trust is your successor trustee's ability to conduct business for you in the event of your incapacity. It is a relatively seamless transition from you as your own trustee to your successor trustee.

Durable Power of Attorney Difficulties

During times of disability or incapacity, you may point to the Durable

Power of Attorney (DPOA) document as the alternative to the disability provisions of a revocable living trust, and it is. The problem with a DPOA is that the banks and financial institutions are more suspicious of it in the sense that if a fraudulent DPOA is presented, then the institution may be held liable to you for any losses.

Consequently, when a party presents a DPOA to the financial institution, they frequently ask its legal department to review and approve the document prior to allowing the agent under the DPOA to act. This could take days, or even weeks, if the financial institution accepts the DPOA at all.

Moreover, with DPOAs, the agent often must be physically present at the financial institution itself to create and sign paperwork that enables her to act for you. Each bank also wants an original of your DPOA, of which there is often only one. This requires your attorney to record the DPOA in the public records and order expensive certified copies. If your DPOA agent is not local or does not have the time to visit each institution where you conduct business, then there may be considerable delay accessing those accounts.

Sometimes the financial institution will not accept the DPOA, citing its age or its lack of a power the institution deems necessary for the agent to act on your behalf. By definition you may be incompetent and unable to sign a new DPOA.

This presents your agent with a difficult decision—should she sue the bank in an effort to force it to accept her authority or go to court seeking a conservatorship over your assets? Either course involves a public court action, which is expensive and time-consuming.

Trusts Own Title to Assets

Compare the DPOA example to a situation where the assets are in the name of the revocable living trust. The trustee of your revocable trust (usually you), own title to your assets, assuming that those assets have been so transferred. When the successor trustee presents a valid trust

naming her as the trustee, the bank or financial institution doesn't have the same concerns that they may have with a DPOA. Therefore, your successor trustee usually has immediate authority to transact business on the trust accounts.

Consider This

Using trusts serves to avoid a court process both in the event of your disability, as well as upon your death, but the trust will only govern those assets actually funded at the time of your disability or death. Consequently, it is imperative that your trust is completely funded when you need your trust the most.

Trusts Are Not Legal Entities

It is important to note that legally trusts are not entities like a partnership or a corporation. Under trust law, a trustee takes legal title to assets for the benefit of the beneficiaries of a trust. That's why the change of ownership to a trust is to ***its trustee***. An example is "***John Smith, Trustee*** for the John Smith Trust dated May 1, 2018." Since the grantor of the revocable trust (in this example, John Smith) is usually also the trustee, it is easy to determine who the trust benefits.

Sometimes, especially in married couple situations, a trust has co-trustees. Here the co-trustees take legal title as follows: ***John Smith and Jane Smith, Trustees*** **for the John Smith** Revocable Living **Trust dated May 1, 2018.**"

When a married couple has a joint trust, however, the legal title may appear as: John Smith and Jane Smith, Trustees for the John and Jane Smith Joint Revocable Living Trust dated May 1, 2018."

These examples point out how easy it might be for someone not well

versed with funding a revocable trust to make a mistake when completing change of ownership documents. A person who is not acting as a trustee, for example, cannot jointly own title to an account with a trustee. When you want to put someone on an account to transact business on the account, it is better to name that person as a co-trustee. With revocable trusts you can always remove a co-trustee.

This is yet another reason why your attorney is integral to the asset alignment process.

Control Questions

Occasionally a client will object to the transfer of his assets into his revocable living trust. He will express fear that once the assets are transferred, he will somehow lose control over the trust assets. This couldn't be further from the truth.

In a revocable living trust the client is typically his own trustee. So long as he remains mentally competent, he is the person who governs how the trust operates. He makes investment and distribution decisions. He can move money in and out of the trust easily. He can buy and sell assets inside of his trust.

The trust is nothing more than a different form of ownership. The trust even uses its grantor's social security number as its tax identification number. For all purposes, the trust is really the client himself. Once this is understood, the client usually feels much better about transferring his assets into his trust.

In our next chapter we'll review why your attorney is the logical choice to quarterback the funding of your trust.

KEY TAKEAWAYS

- ASSET ALIGNMENT, ALSO KNOWN AS "TRUST FUNDING," INVOLVES TRANSFERRING TITLE OF YOUR ASSETS INTO YOUR REVOCABLE LIVING TRUST;
- THE PROPER DESIGNATION USUALLY INCLUDES THE NAME OF THE TRUSTEE, THE TRUST NAME AND DATE AS WELL AS WHO THE TRUST BENEFITS. THE TAX IDENTIFICATION NUMBER FOR YOUR REVOCABLE TRUST IS USUALLY YOUR SOCIAL SECURITY NUMBER;
- PERSONS WHO ARE NOT TRUSTEES GENERALLY CANNOT OWN TITLE TO AN ACCOUNT WITH A TRUSTEE. TO PUT A "JOINT OWNER" FOR THE PURPOSES OF TRANSACTING BUSINESS ON THE ACCOUNT, IT IS BETTER TO NAME THAT PERSON AS A CO-TRUSTEE;
- TRUSTS SHINE IN THE EVENT OF YOUR DISABILITY OR DEATH, AVOIDING COURT PROCESSES. BUT A CONSERVATORSHIP OR PROBATE IS ONLY AVOIDED TO THE EXTENT THAT YOUR TRUST IS FULLY FUNDED;
- A DURABLE POWER OF ATTORNEY DOCUMENT IS MORE DIFFICULT TO ENFORCE AND CONSEQUENTLY DOES NOT PROVIDE A SEAMLESS TRANSITION, AS DOES A TRUST;
- TO TRANSFER TITLE OF ASSETS TO A TRUST, THE TITLE IS TRANSFERRED TO THE NAMED TRUSTEE OF THE TRUST;
- YOU REMAIN IN CONTROL OF ALL YOUR ASSETS FUNDED INTO YOUR REVOCABLE TRUST.

Chapter Two

Why Your Attorney Is Essential to the Funding Process

In the Preface we lamented how many attorneys don't complete their clients' estate planning work because they fail to fund their clients' trusts. It is a real shame since the attorney is the logical professional to champion this process.

Some clients believe that their banker or financial planner should quarterback funding. The primary argument against having your banker or financial planner perform these functions is due to the fact that you probably don't have your accounts all at one institution. Dealing with a variety of bankers, financial advisors, and clerks on the telephone at the large online brokerage institutions is frustrating and leads to inconsistent results.

Moreover, your financial advisor has no idea how to transfer real estate to your trust. If you fail to transfer your real estate into your trust, particularly if you own real estate in different states, your estate will have both a domiciliary and ancillary probate administration requiring two different attorneys in two different states.

But it goes beyond these two reasons. Let's examine a few of the major professional decisions that must be made when transferring assets to your revocable living trust.

Tax Effects

For married clients, the first decision to make regarding funding your trust is determining which assets should be funded into which trust. In other words, which assets are transferred into one spouse's trust over the other's? What goes into your insurance trust? What about IRAs and other accounts that designate a beneficiary?

With the federal estate tax exemption so large, combined with the fact that federal estate tax exemptions between spouses are now portable, this issue is not as important from a federal estate tax perspective. However, in Massachusetts, where we practice, we still have to deal with the Massachusetts estate tax. Currently, Massachusetts taxes estates where the value exceeds $1,000,000. In addition, there remain important capital gains and income tax perspectives when deciding which assets go into what trusts.

Income tax planning within an estate plan is more important now than ever. Many clients have large unrealized capital gains. How you fund your trusts will have a real impact on your surviving spouse, children and other loved ones. (Capital gains issues are more thoroughly discussed in Chapter Four). There are also state tax considerations as well as continuing generation skipping transfer tax exemptions to consider.

Consider This

Ward and June have a large estate and two children (Wally and Theodore), so their attorney recommends dividing their assets between the two trusts. Ward worked for ABC Company for a long time, accumulating stock bonuses that appreciated over the years. Ward and June own a lakefront house and several other assets. Their trusts provide that, after the death of the survivor of them, they divide into separate continuing trust shares for Wally and Theodore. To shield this substantial estate from estate tax through the generations, the attorney recommended balancing the assets between the two trusts to take maximum advantage of the GSTT exemption. He also worked with the financial advisor to balance the unrealized capital gains between the two trusts.

We cannot emphasize enough that how your assets are titled into your trust will have a real economic effect on the surviving spouse and the beneficiaries.

Real Estate Expertise

As we will review in Chapter Three, funding of real estate is vitally important to the success of your estate plan. We've seen clients prepare their own quitclaim deeds that created more problems than they solved, and the same could be said of many title companies. You should know that quitclaim deeds aren't always the best way to convey real estate, as there are warranty deeds available that could serve to retain certain promises contained with the most recent title insurance policy.

Each state's laws come into play as well. The Massachusetts homestead statute, for example, creates special requirements that must be satisfied before real estate is conveyed. Different states all have their own quirks. That's why your estate planning attorney likely had you engage an attorney in each state where you own real estate.

Not only must the party preparing deeds be conversant with the state laws regarding the deed itself, but also with specific statutory requirements and references necessary to document the existence of the trust. In Massachusetts, for example, there are statutory references that allow us to record a short form "Trust Certificate" to prove the existence of the trust and verify the authority of the trustee to deal with real estate. This Trust Certificate circumvents the need to record the actual full trust on the public records and keeps the client's estate plan private. We also often times use a "nominee trust" to hold title to real estate to protect the privacy of the estate plan.

Contrast Massachusetts' requirements with those of Florida, where there are statutory references to trustee powers that should be referenced on the face of a deed when conveying real property into a trust. These references circumvent the need to record the trust or even a trust certificate on the public records when subsequently mortgaging, gifting, selling or otherwise alienating the property interest.

Not all real property is equal. New York City's many cooperative apartments are not considered real estate, and the cooperative governing documents must be carefully examined to determine whether the interest may even be conveyed to a trust. Many cannot.

Further, some properties have legal descriptions using metes and bounds. A metes and bounds legal description is one that describes boundary lines, with terminal points and angles, usually listing the compass directions and distances of the boundaries. When real estate is described this way there are often legal issues not found in platted subdivisions.

Consider This

Oliver the farmer is married to Lisa the socialite. When they moved from an expensive co-op on New York City's Park Avenue to Green Acres, they required attorneys to properly review the cooperative documents to determine how best to fit that asset into the estate plan. Conveying Green Acres to Oliver's trust proved more difficult than most, since the deed contained a metes and bounds legal description and Oliver had conveyed a portion of the property to a developer. His Iowa attorney recommended that Oliver hire a surveyor to obtain a proper legal description.

Closely Held Business Interests

Yet another situation that relies on an attorney's expertise rests in the transfer of closely held business interests to your revocable living trust. Some of those interests require nothing more than a simple assignment to trust, while others contain additional complications.

S Corporation stock, for example, poses unique issues. Under federal tax law, only certain types of trusts can own S Corporation stock without disqualifying the election. Should an S Corporation lose its S status, it no longer passes through its income to its shareholders without incurring a corporate-level tax.

Yet another issue arises in closely held business interests where the shares are restricted from transfer due to stockholder, partnership or membership agreements. An innocent transfer to trust could trigger a mandatory sale provision or have other adverse consequences. Here the estate planning attorney should be engaged to review the corporate, partnership or LLC documents to determine if any transfer consequences apply.

We cover all these issues and more in Chapter Three.

Blended Families

A host of funding issues arises whenever a married couple has children not of their current union, especially if the couple's trusts don't mirror one another. Husband's trust may provide for wife for the remainder of her lifetime, for example, but then distribute to his children and not hers. Wife's trust might provide for her children and not his.

How the joint assets divide between the two trusts, which assets are funded into what trust and the relative legal, tax and financial consequences of these decisions all play into the funding and beneficiary designations.

Consider This

Mike and Carol are currently married. Mike has three sons from a prior marriage, and Carol has three daughters from her prior marriage. While they strive to raise the entire family as one unit, Mike wants his life insurance policy to benefit Carol and then his boys. Rather than naming Carol as the direct beneficiary, his revocable trust is named since his trust first creates a marital trust for Carol's exclusive benefit should she survive Mike, and then upon her death the remaining proceeds would benefit his boys.

Complete File

It makes sense for your attorney to lead the funding efforts, as your estate planning file then contains all the relevant information that your successor trustee requires when she takes over for you. If your attorney does not have all your asset and title information in his file, he will not be able to instruct your successor trustee at that time. This is another reason for you to continue in The Family Estate & Legacy Client Care Program™ as well.

Miscellaneous Issues

In a short book there remain many other issues too numerous to mention. This is where an attorney's knowledge, expertise and experience merit her involvement when considering how to best fund her clients' assets into the revocable living trust. Every client's situation is unique, including family dynamics, the types of assets owned, how those assets are titled as well as the client's dispositive intent. There is no one answer that applies to every situation.

You may wonder whether creating a trust is worth it given the details mentioned in this chapter. Keep in mind that these same issues would all likely arise in a probate upon your death. Having a trust, therefore, is not the problem. In fact, addressing these issues with a well-qualified attorney during your lifetime, where your wisdom and historical perspective can contribute to the process, is preferred to a situation where your surviving spouse or heirs must figure these issues out alone and without guidance.

KEY TAKEAWAYS

> YOUR ATTORNEY IS USUALLY THE BEST CHOICE TO DIRECT AND ASSIST WITH THE FUNDING OF YOUR REVOCABLE TRUST, ALTHOUGH NOT ALL ATTORNEYS ARE WILLING AND EQUIPPED TO TAKE ON THIS ROLE;

> WHICH ASSETS ARE FUNDED INTO WHICH TRUST MAY ONE DAY HAVE FAVORABLE INCOME, ESTATE AND GENERATION SKIPPING TRANSFER TAX IMPLICATIONS IF PROPERLY ACCOMPLISHED;

> CONVEYING REAL ESTATE MAY INVOLVE STATE LAW ISSUES, TITLE ISSUES AND OTHER UNIQUE CONVEYANCE ISSUES THAT ONLY A QUALIFIED, EXPERIENCED ATTORNEY CAN IDENTIFY;

> TRANSFERRING CLOSELY HELD BUSINESS INTERESTS IS FRAUGHT WITH LANDMINES LIKE ADVERSE TAX CONSEQUENCES AND THE TRIGGERING OF SHAREHOLDER/PARTNERSHIP/MEMBERSHIP AGREEMENT OBLIGATIONS;

> WHICH ASSETS ARE FUNDED INTO WHICH TRUSTS MAY ALTER THE ESTATE PLANNING OUTCOME IN BLENDED FAMILY SITUATIONS, ESPECIALLY WHERE THE MARRIED COUPLES' TRUSTS DON'T MIRROR ONE ANOTHER;

> SO LONG AS YOUR ATTORNEY REMAINS THE FUNDING POINT PERSON, HIS FILE WILL BE COMPLETE FOR YOUR SUCCESSOR TRUSTEE WHEN THAT PERSON MUST TAKE OVER TRUST RESPONSIBILITIES;

> THERE REMAIN A HOST OF OTHER ISSUES TOO NUMEROUS TO MENTION, POINTING TO AN ATTORNEY'S ESSENTIAL INVOLVEMENT IN THE FUNDING PROCESS.

Chapter Three

Funding Real Estate & Business Interests

Just like transferring ownership of your bank, investment and brokerage accounts, as we will discuss in Chapter Four, must be accurately completed for your revocable trust to effectively govern those assets, so too must the transfer of real estate and business interests. Real estate and business interests typically have more technical issues, and consequently, your attorney should be involved in the process.

Like always, keep in mind that, generally speaking, so long as you remain alive and competent, the transfer of your assets, including real estate and business interests, remain under your control when transferring to your revocable trust. You continue to have the ability to sell, gift, lease, or otherwise transfer the assets. It is just another form of ownership.

Real estate is transferred by deed, which is almost always recorded on the public records. As we describe below, when you took title, the type of deed is important, as is the type of deed used to transfer the property into your revocable trust.

Residential Real Estate

Most of us own homes that should be transferred to our revocable trusts. Like any other asset, you want your successor trustee to have the ability to deal with the residence in the event of your disability, as well as avoid the public probate process on your death, which could result in delays transferring the residence to your heirs or selling the residence.

Consider This

George and Louise bought a "deluxe apartment (condominium) in the sky" as their primary residence. When they created a joint revocable trust, their estate planning attorney transferred the residence into their revocable living trust. When George died, there was no probate, or any other action required other than a simple affidavit indicating that Louise was now the sole trustee of the trust. When Louise died, their son Lionel had the ability to list the residence for sale and to sell it without a court order or process.

As discussed in Chapter Two, some states, such as Massachusetts, have special requirements to transfer ownership of real estate into your trust by utilizing either a Trust Certificate or nominee trust to hold title.

Many states also have spousal rights in a primary residence unless waived in a valid nuptial agreement. Consequently, how your residence fits into your estate plan, along with the method under which your residence is transferred to your trust, are important issues for your estate planning attorney to consider.

Notes and Mortgages

When transferring real estate to a trust, one should always be mindful of any loan covenants relating to outstanding mortgage indebtedness. Typically, mortgages contain "due on transfer" clauses, accelerating the remaining principal balance and outstanding interest upon the transfer, including to a trust. The Garn-St. Germaine Depository Act of 1982, a federal law that is generally favorable to mortgage lenders, has been read to limit their ability to accelerate mortgage indebtedness of purchase

money mortgages upon a transfer of a residence to a trust where the borrower is also the primary beneficiary, such as in a revocable trust.

Here, your attorney will ask for any mortgage information in case she needs to inform the lender of the transfer and to remind the lender of the application of Garn-St. Germaine. Failure to take these important steps could lead to unnecessary headaches. Further, line of credit and second mortgage indebtedness may or may not be covered by Garn-St. Germaine, so it is important to disclose the existence of all notes and mortgages to your estate planning counsel, so she can take precautions when deeding your residence into your trust

Home/Condo Owner Associations

Many homeowner and condominium associations require consent for you to transfer your residence, even into your own revocable trust. In almost all cases the association cannot unreasonably withhold consent. This is just a procedural aspect that your attorney will typically take care of.

Sometimes a residence includes an ancillary structure such as a boat dock, separated parking structure/garage, storage units or common areas. In these instances, if an association governs the subdivision, its transfer documents may be relevant, resulting in your attorney reviewing the deed restrictions or association governing documents and drafting necessary provisions into the deed or by creating ancillary transfer documents. If an association is not relevant, these additional structures may also require additional language in the deed or ancillary transfer documents.

If you are renting your residence to third parties, you may need to obtain approval from your association. Additional rental issues are discussed below.

Secondary Residences

Secondary or vacation residences often have the same issues associated

with the transfer of primary residences. As always, it is vital to disclose the existence of any mortgage, line of credit, or other encumbrance to your estate planning attorney, as she may need to obtain lender approval prior to any transfer.

Secondary residences may be rented or used in advanced estate planning strategies such as family limited partnerships, Qualified Personal Residence Trusts (QPRTs), or in life estate deeds, for example. If your current estate planning council was not involved when you implemented those strategies, it is important to disclose this information and to provide copies of relevant trusts, deeds, gift tax returns and other relevant documents.

Similarly, if you are renting your secondary residence to third parties, bring this up with your estate planning counsel for reasons described below.

Rental Properties

With the arrival of websites such as VRBO, Airbnb and others, renting your residence to third parties is easier than ever. Having rental properties also brings up vital estate planning, liability and asset alignment issues.

If you own a rental property individually or jointly with your spouse or another, rather than transferring the units into your revocable trust, it might be wise to consider a family partnership, LLC or related entity to segregate the liability associated with renting to third parties.

If a slip and fall should occur in the unit (or worse), you wouldn't want all your other assets subject to the liability if a judgment should exceed the limits of your liability insurance. This speaks to an important issue: you want to ensure that the unit is adequately covered. If you haven't disclosed to your carrier that you are renting to third parties, then you may not be covered under your liability policy against claims from renters, so obviously this is an important issue you should address.

Liability Insurance Issues

Whether or not you are renting properties to third parties, when transferring residences to a trust or to an entity such as an LLC or partnership, it is important to notify your liability carrier. Most transfers to revocable trusts don't require anything more than listing the trust as the new owner on the policy, unless it has not yet been disclosed to the carrier that the property is rented.

In instances where the property is transferred to an entity such as a family partnership and LLC, it is not uncommon for the insurance policy to change, reflecting entity ownership as opposed to individual or trustee ownership.

Umbrella policies are also a must for anyone with any degree of net worth. Your revocable trust does not protect your assets from your potential claimants and creditors because you have the ability to consume, transfer, withdraw or otherwise deal with the trust assets as you choose. A revocable trust is, generally, an extension of you. It is another form of ownership.

Umbrella policies are not all that costly. Further, the premium for an umbrella with a $5 million or $2 million limit may only be slightly more than one with a $1 million limit, which is the industry standard. The larger your net worth, the more umbrella coverage you should consider.

Umbrella insurance is meant to help protect you from large and potentially devastating liability claims or judgments. Personal umbrella coverage comes into play when your underlying liability limits (such as from a homeowner's or auto insurance policy) are reached. Umbrella policies require you to carry certain minimums on your personal homeowner's, automobile and boat policies, for example, so there is no gap in coverage between the individual policy and where the umbrella picks up the liability.

Consider This

George was driving down the road in his car and accidentally hit a group of bicyclists. George's auto policy coverage is expressed as three numbers, for example 250/500/250, which means $250,000 in bodily injury coverage per person, $500,000 in bodily injury coverage per accident and $250,000 in property-damage coverage per accident. The group of bicyclists he hit included a neurosurgeon, a dermatologist, and an attorney, injuring all three. His automobile liability limits would not cover the total loss of wages that he was certainly going to be sued for, in addition to the injuries and the property damage he caused. It is a good thing that George purchased a $5 million umbrella policy.

When you transfer assets to legal entities such as partnerships and LLCs, however, it will be important to determine whether that entity requires a different liability policy, and if so, whether that policy would be supported by your umbrella or require an additional umbrella policy.

Vacant/Partially Developed Tracts

Like any other real estate, vacant properties should be re-titled to your revocable living trust. This is usually accomplished with a deed that matches the legal description of the deed from which you took title. Beware, however, when you own a larger tract of land and either sold, gifted or conveyed some portion of that tract. In that case, you will need to advise your attorney so that he doesn't prepare an incorrect title description in the new deed. In a metes and bounds title description, you will likely need a new survey to accomplish this.

Beware Title Companies

Attorneys should prepare the deeds necessary to transfer properties into your trust and not title companies. Title companies employ clerks who work off of forms. Even title companies that have attorneys on staff commonly make a variety of mistakes when conveying real estate into a trust. Some of the mistakes we see on a regular basis include:

- Incorrect grantee. Title should be conveyed to a trustee for the correctly named trust. We've seen deeds that convey to "Jane Smith, Trustee" without any description of the underlying trust instrument. We've also seen incorrect description of trust instruments;

- Failure to draft, or improper drafting of, a Trustee Certificate to document the existence of the trust can cause the transfer to the trust to fail. This could result in the property becoming a probate asset or create other title issues;

- Failure to take the necessary steps to maintain or declare homestead rights for the beneficiaries of the trust. If the proper steps are not taken, homestead rights may not apply to the primary residence;

- Failure to notify lenders and homeowner's associations of the transfer as described in this chapter.

These and other common mistakes made by title company clerks are easily avoided by having a qualified attorney draft the necessary deed and other transfer instruments. An attorney may be slightly more expensive than a title company, but you get what you pay for.

Out-of State Properties

If your estate planning attorney is not licensed in a jurisdiction where you own real estate interests, she will likely engage, on your behalf, an attorney of your choosing (in that state) to prepare the deed and transfer instruments. Unless licensed in the other jurisdiction, your home-state attorney cannot prepare the out-of-state deed. If she did, she will likely

be engaged in the unlicensed practice of law in that state. If you do not know of an attorney, she will likely find one for you.

Commercial Real Estate

A plethora of issues surround commercial real estate. In many instances, commercial real estate is held in a partnership, corporation or LLC structure, and not individually. If this is the case, then the conveyance of the property by deed is usually unnecessary. Rather the conveyance of the partnership interest, corporate shareholder interest or LLC membership interest must occur, and the issues described in the next section below should be addressed.

In many instances, commercial real estate includes leased property to tenants. In such event, you should ask your attorney to review the leases to determine if the transfer violates any covenants or if, upon renewal, the leases need to include different provisions.

Commercial real estate that is encumbered warrants a review of the mortgage loan documents to ensure that the transfer of an underlying interest does not trigger a due on transfer clause, thus accelerating the principal balance of the note and interest.

Closely Held Business Interests

It is usually a good idea to convey shareholder, partnership or membership interests to your trusts for the same reasons that apply to your other assets. When so doing, however, you may want your estate planning attorney and/or corporate counsel to coordinate efforts since the transfer may require approval of other shareholders, partners or members. Further, corporate, partnership and/or LLC governing documents may have to be adjusted to reflect trustee ownership rather than individual ownership.

A common example of this is found in buy-sell provisions. It is not

uncommon for the governing documents to require a sale if the shareholder, partner or member becomes incapacitated or dies, for example. When a trustee owns the interest then the governing documents may instead speak to the status of the beneficiary of the trust, or the provisions may require another thought process.

Sometimes bank loan covenants contain restrictions on the transfer of shares, partnership or membership interests as well. If your family business has outstanding loans it is important to review the loan documents, security and related agreements to ensure that the transfer will not trigger any default clauses.

Tax status is yet another issue that should be addressed when transferring interests to trust. "S" corporation status may be jeopardized with certain types of trusts. It is important to advise your estate planning attorney about the tax status of your closely held business as additional language in your trust instrument might be beneficial or necessary.

KEY TAKEAWAYS

- TRANSFERRING YOUR REAL ESTATE AND BUSINESS INTERESTS TO A REVOCABLE TRUST GENERALLY DOES NOT MEAN THAT YOU LOSE CONTROL OVER THOSE ASSETS AND IT IS IMPORTANT TO ACCOMPLISH FOR THE SAME REASONS THAT YOUR OTHER ASSETS SHOULD BE TRANSFERRED TO YOUR TRUST DURING YOUR LIFETIME;
- YOUR ESTATE PLANNING ATTORNEY SHOULD HAVE A PRIMARY ROLE IN THE TRANSFER OF YOUR REAL ESTATE PROPERTIES SINCE THERE ARE A VARIETY OF TECHNICALITIES YOUR ATTORNEY WILL BE FAMILIAR WITH ASSOCIATED WITH THE TRANSFER OF RESIDENTIAL AND COMMERCIAL PROPERTIES, WHICH IF NOT FOLLOWED, CAN LATER CAUSE HEADACHES;
- INFORM YOUR ESTATE PLANNING ATTORNEY IF ANY OF YOUR PROPERTIES ARE ENCUMBERED, TYPICALLY BY A NOTE AND MORTGAGE. IN THESE INSTANCES, IT IS IMPORTANT TO CONFIRM THAT THE TRANSFER OF THE PROPERTY TO YOUR TRUST DOES NOT TRIGGER ANY DUE-ON-TRANSFER CLAUSES;
- PROPERTIES SUBJECT TO HOMEOWNER'S OR CONDOMINIUM OWNERS' ASSOCIATIONS MAY REQUIRE PERMISSION FROM THE ASSOCIATION PRIOR TO RECORDING A DEED, OR MAY HAVE ANCILLARY OR COMMON AREA ISSUES TO ATTEND TO;
- WHEN TRANSFERRING PROPERTIES TO TRUST, YOU SHOULD ALWAYS CHECK WITH YOUR LIABILITY CARRIER TO ENSURE THAT THE LIABILITY INSURANCE CONTINUES IN THE PROPER NAME AND COVERAGE;
- IF YOU HAVE ANY DEGREE OF NET WORTH, YOU SHOULD CARRY AN UMBRELLA INSURANCE POLICY TO PROTECT YOUR ASSETS SINCE A REVOCABLE TRUST DOES NOT PROTECT YOUR ASSETS FROM A CREDITOR OR POTENTIAL CLAIMANT;
- TRANSFERRING COMMERCIAL REAL ESTATE INCLUDES A VARIETY OF ISSUES YOU WANT YOUR ESTATE PLANNING ATTORNEY TO ADDRESS, FROM THE FORM OF OWNERSHIP (INDIVIDUAL, JOINT, PARTNERSHIP, CORPORATE OR LLC ENTITY) AS WELL AS POTENTIAL TENANT, LIABILITY AND LENDER ISSUES;
- TRANSFERRING ENTITY (PARTNERSHIP, CORPORATE AND LLC) INTERESTS MAY NECESSITATE A REVIEW OF THE ENTITY'S GOVERNING DOCUMENTS TO ENSURE THAT THE TRANSFER TO TRUST DOES NOT HAVE TO BE APPROVED, AND IF ANY ADJUSTMENTS SHOULD BE MADE TO THE GOVERNING DOCUMENTS BECAUSE A TRUSTEE OWNS THE INTEREST.

Chapter Four

Funding Bank & Investment Accounts

It is a good idea to transfer your bank and investment accounts into your revocable living trust. As we indicated in Chapter One, doing so will not restrict your access to the accounts when you are acting as your own trustee. You continue to manage the assets as you see fit, can spend what you want and can buy and sell the investments as always.

You will continue to report all dividends, interest, capital gains and losses on your personal Form 1040 since your trust will use your social security number as its tax identification number.

Consider This

Be aware that your IRA, 401(k) and other qualified retirement plan accounts are not transferred to your trust. To transfer them to your trust , you would be required to withdraw the assets, resulting in the recognition of taxable income and the loss of continued tax deferred (or in the case of Roth accounts—tax free) growth. We review beneficiary designations of these accounts more fully in Chapter Six, as well as Standalone Retirement Trusts that some of our clients have that are named as the beneficiary to these accounts.

Financial Advisors

Those with financial advisor relationships can seek their assistance in transferring the accounts to trust but should ensure that their estate planning attorney is involved in the process. Most financial advisors have

experience assisting their clients in the transfer of accounts to a revocable trust and often do a good job. In any event, it is usually a good idea to have your estate planning attorney verify the account transfers before they occur.

We once had a client's financial advisor transfer the investment account assets into "John Smith and Jane Smith, Trustees for the John and Jane Smith Trust." In this case, however, John and Jane had separate trusts, not a joint trust. This error wasn't discovered until after John had passed. It became quite a mess. Additionally, sometimes John Smith will have numerous trusts and the account is titled as "John Smith, Trustee for the John Smith Trust" which is not differentiated by date or trust type.

This is not to say that all financial advisors make mistakes. We're merely suggesting that you have your financial advisor work closely with your estate planning attorney to ensure that the accounts are properly titled.

We've also seen mistakes occur when financial advisors switch firms. In the haste to move their client accounts from the old firm to the new firm, assets are commonly placed back into individual or joint name when they had previously been funded into the client's trust. Again, before signing financial firm documents, including beneficiary designations, it is a good idea to run them by your attorney.

Do-It-Yourselfers

With the proliferation of discount mutual fund and trading firms, especially those online, do-it-yourselfers often don't have financial advisors who can assist with the transfer of account ownership into revocable trusts. Consequently, for these clients, working with an attorney who assists with the funding of your trusts is more essential than ever.

Every firm has a different change of ownership form, and many firms have specific forms for different situations, which can be confusing. It is therefore important to ensure not only that the forms are completed correctly but also that the institution accepts the change of ownership reflecting the trustee of the trust as the new owner.

When you receive a hard-copy statement in the mail from the financial institution, it is easy to verify that the trustee is listed as the account owner. This is not always the case, however, with online accounts, where it may not be as evident whether a trustee or the beneficiary of the trust is listed. Your attorney will not be able to view the online account unless she is sitting with you in front of the computer, so vigilance on your part to determine that the funding transfer is properly completed is crucial.

Consider This

Financial firms are wary when an account changes ownership, even if it is from the owner to herself as trustee for her revocable trust. Consequently, almost every bank and financial firm has strict requirements that, if not specifically satisfied, will result in the rejection of the transfer to the trust.

Consolidating Accounts

Over many years some clients accumulate a surprising number of accounts. They may have four or five mutual fund accounts, three online brokerage accounts, an investment account with a traditional financial advisor (or two!) plus several certificates of deposit scattered around town.

"I do this to diversify," our client once told us.

"You realize that one index mutual fund has you diversified amongst many different companies," we point out. "Besides, since your financial advisor only knows about a slim portion of your total investments, he may unknowingly over-weight you in a stock holding or sector."

"Well, I'm only insured on each account for only so much. So, I want to

make sure that my investments are safe," our client argued.

"FDIC insurance on bank deposits doesn't apply to investment accounts," we counter. "Those accounts are insured by the SIPC which is different than the FDIC."

Our point in relaying this story is to encourage you to hold accounts at different institutions for the right reasons, as well as to consolidate your accounts where it makes sense. Not only is it more time-consuming to transfer a plethora of different accounts into your trust, but it is also often more expensive. Attorneys who prepare the funding transfers as a part of their estate planning services commonly charge for transfers above a certain number of accounts.

Consider This

When Granny became incompetent, her banker, Mr. Drysdale, told Granny's daughter, Elly May, that there were several certificates of deposit that hadn't been transferred into Granny's trust. They had yet to mature, and, in that bank, transfers, even to trusts, weren't allowed without penalty. Elly May wondered how many accounts around town Granny held. Since Granny could no longer remember where she held different accounts (with many of them online where no hard-copy statements would be mailed to her residence), piecing together Granny's holdings was going to pose a most difficult problem.

Joint Accounts

Joint accounts pose another set of challenges, especially if the co-owners are not spouses. There are three different forms of joint ownership, and it is important to understand the legal consequences of each:

Tenants in Common (TIC) is a specific type of concurrent ownership by two or more parties, each holding an individual, undivided ownership interest. Each party has the individual right to separate, or alienate (transfer, convey, gift) his share of the ownership interest.

Consider This

Granny placed her brokerage account in joint name with Jethro as TIC. This is a lifetime taxable gift to the extent that the value of the account transferred exceeds the annual exclusion amount ($15,000 at the time of the writing of this book). When Granny died, Jethro owned his one-half of the account to do with as he pleased. The remaining half will be distributed by Granny's will, subject to probate. Her will stated that Jethro and Elly May each are entitled to half. In the end, Jethro received ¾ of the account, and Elly May ¼. Only Granny's half received a step-up in tax cost basis at her death, so capital gains were not minimized, and Granny's dispositive intent to divide the account equally between Jethro and Elly May was not accomplished.

Joints with Rights of Survivorship (JTWROS) accounts will pass, upon the death of one party, to the other parties automatically outside of probate, as well as outside of any dispositive intent evidenced in the

deceased account owner's will or trust. To alienate, convey, transfer or gift an account owned JTWROS during lifetime, all account owners must consent to the transfer.

Consider This

Granny placed her brokerage account JTWROS with Jethro. This is a taxable gift to the extent Jethro withdraws any funds exceeding the annual gift tax exclusion amount. Granny later realized that at her death she wants Elly May to also receive one-half, so she needs to make Elly May a co-owner, but Jethro will not sign the new account ownership forms to do so. Elly May will not receive any part of the account. At Granny's death, Jethro receives the entire account outside of Granny's dispositive intent evidenced in her will and trust.

Another consequence of joint accounts, both TIC and JTWROS, is that the assets of a joint account can also be placed at risk when the joint account holder has other liabilities such as those involved in car accidents, homeowner's mortgage delinquencies, deficiencies on mortgage foreclosures, divorces, business liability lawsuits or declarations of bankruptcy.

Tenants by the Entirety (TBE) is a form of ownership that is available only to married spouses. Here, each spouse owns the undivided whole of the property, coupled with the Right of Survivorship, so that upon the death of one, the survivor is entitled to the decedent's share. Both spouses are required to alienate, or transfer, the account or assets. In Massachusetts, TBE is only available to real property while in other states

(like Florida), intangible assets like bank and brokerage accounts may be so owned. Consequently, many national banks and brokerage firms will not offer TBE, even if it is a legal form of ownership in your state of residence.

Consider This

Granny is a resident of a state where brokerage accounts can be owned TBE. She and her spouse, Jed, place their brokerage accounts in TBE. There is no taxable gift consuming some part of Granny's federal gift/estate tax exemption since married couples can transfer unlimited amounts between them without paying tax. The survivor of Granny and Jed, however, gets to determine the ultimate beneficiary of the account. Also, should the survivor remarry without a nuptial agreement, a new spouse may have rights to the account.

When you have a revocable trust, there's no reason for joint accounts. The trust provides for the disposition of the assets during your lifetime, as well as at your death. A successor trustee has immediate access to the accounts in the event of your disability or death. Further, with revocable trusts, you can maximize the step-up in tax cost basis, thereby minimizing capital gains.

Transfer/Pay on Death Accounts

Banks and brokerage firms have another probate-avoidance tool in "Transfer on Death" (TOD) or "Pay on Death" (POD) accounts. The idea behind the account is to name a beneficiary, rather than having a will subject to probate, control the disposition at death.

Walk into any bank branch and ask a teller how you should title your Certificate of Deposit or Savings account to avoid a conservatorship or probate, and it is common for them to suggest placing the account into joint ownership with rights of survivorship or to use a "Pay on Death" or "Transfer on Death" account title. The problem is, these accounts typically only allow one person to be placed on each account as a beneficiary and this can create significant problems if the account balances change over time.

Consider This

Mary, who recently lost her husband, was concerned that if she were to pass away, all her money would have to go through probate before her three children could inherit. After talking to her friend, she decided to open three certificates of deposit at her local bank, of $25,000 each. Mary then named a different child on each CD as a "Pay on Death" beneficiary. Mary thought that now she had solved the problem of the assets going through probate and her children would each inherit $25,000 at her death. However, as Mary's care needs increased, her son (who was her power of attorney) cashed in two of the CDs to pay for her health care costs. When Mary passed, the one remaining CD went only to the sole designated beneficiary and not equally to all three children. That child (who happened to be the power of attorney) refused to split the funds with his siblings and Mary's wishes were not carried out.

Again, a revocable living trust is a much-preferred method to deal with the use of your assets during your lifetime, including your disability, as well as your death. TOD and POD accounts are fine for those with a very modest amount of wealth, but for nearly everyone else, the trust

is much more versatile, ensures the proper use and disposition of your assets, and avoids expensive, public and time-consuming court processes.

Post-Death Problems with POD/TOD

Another headache caused by POD and TOD accounts lies with the various payments that must be made from your accounts following your death. Perhaps your residence or other real estate has ongoing carrying costs that need to be paid (mortgage, taxes, insurance, homeowner's association fees, utilities) until the property is either sold or distributed pursuant to your will. POD and TOD accounts are generally not available to pay these expenses since, on death, the designated beneficiary immediately owns them.

The same problem occurs with any other last bills, such as doctors, hospitals, credit cards, income taxes and professional fees (such as your accountant and attorney). If the beneficiaries of the TOD/POD accounts are not the same parties who will inherit the rest of your estate in the same proportions, the new owners of the accounts will not have any incentive to assist those that would have otherwise needed cash from your estate.

If your will and trust create protective trusts for your spouse, children or other loved ones, the POD/TOD accounts will also serve to thwart your estate plan.

Everyday Checking Account

When you have a revocable trust, about the only account where a transfer/pay on death account is useful is with your everyday checking account. You may have automatic deposits and payments programmed into this account. Some institutions require you to change the account number if you re-title it into your revocable trust, thus requiring you to change everything from social security deposits, mortgage, utility and other every day payments.

If this is a danger with your bank, the answer may lie in adding a transfer/pay on death designation to your revocable trust. Many banks allow for this and it should avoid the probate process at your death.

KEY TAKEAWAYS

> FUNDING BANK, FINANCIAL AND INVESTMENT ACCOUNTS INTO YOUR REVOCABLE TRUST CORRECTLY IS MORE DIFFICULT THAN YOU MIGHT IMAGINE. EVEN IF YOUR FINANCIAL PLANNER OR BANKER IS WILLING TO COMPLETE THE PAPERWORK, HAVE YOUR ESTATE PLANNING ATTORNEY VERIFY IT;

> IF YOU HAVE NUMEROUS ACCOUNTS SCATTERED OVER SEVERAL DIFFERENT FIRMS, IT BENEFITS YOUR ESTATE PLAN TO CONSOLIDATE THE ACCOUNTS INTO JUST A FEW. IF YOU SHOULD BECOME DISABLED OR DIE, HAVING NUMEROUS ACCOUNTS AT A MYRIAD OF INSTITUTIONS MAY BECOME A HEADACHE FOR YOUR SUCCESSOR TRUSTEE;

> JOINT ACCOUNTS ARE LARGELY UNNECESSARY WHEN YOU HAVE A REVOCABLE TRUST BECAUSE YOUR SUCCESSOR TRUSTEE CAN ACT ON THOSE ACCOUNTS IN THE EVENT OF YOUR DISABILITY. JOINT ACCOUNTS MAY ALSO THWART YOUR ESTATE PLAN;

> THERE ARE THREE DIFFERENT FORMS OF JOINT OWNERSHIP: TENANTS IN COMMON, JOINT WITH RIGHTS OF SURVIVORSHIP, AND TENANTS BY THE ENTIRETY. EACH HAS A DIFFERENT LEGAL CONSEQUENCE REGARDING OWNERSHIP AND SURVIVOR RIGHTS;

> TRANSFER OR PAY ON DEATH ACCOUNTS ARE ALSO UNNECESSARY WHEN YOU HAVE A REVOCABLE TRUST. WHILE TOUTED BY BANKERS AND FINANCIAL INSTITUTIONS, THEY ARE MOST USEFUL FOR THOSE WITH A VERY MODEST ESTATE. TOD AND POD ACCOUNTS OFTEN CAUSE MORE PROBLEMS THAN THEY SOLVE IN MANY ESTATE AND TRUST ADMINISTRATIONS.

Chapter Five

Beneficiary Designation Basics

Certain assets are not transferred to your revocable trust during your lifetime. These include IRA, 401(k), pension and profit-sharing accounts and annuities. Directing a transfer of these accounts into your revocable trust often results in the custodian withdrawing the account balance, resulting in adverse income tax consequence.

Instead, the beneficiary designation to these accounts is what's important.

Traditional IRA and 401(k) Accounts

Traditional IRA and 401(k) accounts require minimum distributions (RMDs) beginning on the April 1st following your 70½ birth date. Before age 59½, generally speaking, distributions from these accounts incur a ten percent federal excise tax. Withdrawals from traditional IRA and 401(k) accounts usually result in the recognition of ordinary taxable income, resulting in the payment of federal tax, as well as a state income tax in states that so impose income taxes, like Massachusetts.

If you should become disabled, it becomes very important that you have an up-to-date Durable Power of Attorney document naming an "Attorney-in-Fact" (an agent who is usually a loved one or close friend) to have powers over the account, such as to take withdrawals on your behalf, change the custodian, or alter the investment mix of the portfolio.

Upon your death, who you have named as your primary beneficiary has significant implications. If it is your spouse, he or she may roll over the account into his or her own IRA and, absent any binding legal agreement to the contrary, may name whomever he or she wants as the new primary beneficiary.

Consider This

Mike names Carol as the primary beneficiary to his traditional IRA account. Mike wants his sons, Greg, Peter and Bobby, to inherit his IRA so he names his sons as the contingent beneficiaries. Mike and Carol have verbally agreed that Carol will name Mike's sons to his IRA portion should she survive him. When Mike dies, Carol rolls over his IRA into her own IRA account, which names her daughters Marcia, Jan and Cindy as her primary beneficiaries. When Carol dies and the boys discover they are not named as beneficiaries, they visit with an estate litigation attorney who advises there is no legal standing to sue Carol's estate for the remainder of their father's IRA, since there was no binding written agreement.

Protecting the IRA

While in some states IRA accounts are protected from the claims of the account owner's creditors, the beneficiaries of the accounts are rarely afforded the same protections. Consequently, inherited IRA trusts have become popular when you name a non-spouse beneficiary to the account.

These inherited IRA trusts are commonly referred to as Standalone Retirement Trusts (SRTs). In an SRT, a Trustee is responsible for taking, at a minimum, the required distribution for the beneficiary annually. The trustee may either distribute that amount out to the beneficiary, or if there is a creditor danger, including a divorce issue, then the trustee may accumulate the withdrawal inside of the trust.

Consider This

Mike names his sons Greg, Peter and Bobby as the primary beneficiaries to a portion of his IRA account. When Mike dies, Greg has significant creditor issues because Greg's small business went bankrupt. Greg's financial troubles also caused marital problems, resulting in his spouse filing for divorce. Absent an SRT, Greg's IRA withdrawals could become subject to the claims of his divorcing spouse and creditors.

Traditional Inherited IRA Required Minimum Distributions (RMDs)

Unlike the IRA account owner, the beneficiary of a traditional inherited IRA account has RMDs regardless of age. If a beneficiary is less than the age of majority, there could be a significant problem without an SRT because the custodian of the account (the financial institution where the account is held) cannot make distributions to minors without a legal conservatorship in place. This means that someone must petition the court to be appointed as the legal conservator over the property and file annual accountings with the court. This can be extremely time consuming and expensive.

When you establish an SRT, there are five requirements under federal tax law for the beneficiary to receive RMDs over the course of his or her lifetime:

1. The trust must be valid under state law;
2. The trust is irrevocable or will, by its terms, become irrevocable upon the death of the participant;
3. The beneficiaries of the trust (who are beneficiaries with respect to the trust's interest in the retirement benefit) must be identifiable from

the trust instrument;

4. Certain documentation must be provided to the plan administrator by a stated deadline; and

5. All trust beneficiaries must be individuals.

Keep in mind that a typical beneficiary designation from your financial or brokerage firm naming the SRT as the inherited IRA beneficiary may not satisfy these five requirements.

Absent the proper IRA beneficiary designation and the SRT satisfying these five requirements, the inherited IRA beneficiary may have to withdraw the entire IRA account balance either in the calendar year following the account owner's death, or over the course of the next five years, depending upon other relevant factors at the time of the account owner's death.

This is yet another reason to include your estate planning attorney in the review, completion and submission of your IRA beneficiary designation forms

Consider This

Mike names Greg, Peter and Bobby as the primary beneficiary to a portion of his IRA. Due to Greg's potential creditor issues and the fact that Bobby is a minor when Mike completes his estate plan, Mike has his estate planning attorney create an SRT. The estate planning attorney also completes the IRA beneficiary forms to comply with the five federal tax law requirements so that, upon Mike's death, the boys will not only have the protection of the SRT but will also achieve the best tax deferred status available, minimizing their income taxes.

Roth IRA and 401(k) Accounts

Unlike traditional IRA and 401(k) accounts, withdrawals from Roth accounts by an account owner over age 59½ generally do not result in income taxation. Further, the account owner of a Roth IRA/401(k) account does not have minimum required distributions.

Consider This

Mike owns a Roth IRA account with a balance of $700,000. Mike is not required to taker RMDs and doesn't do so until the time of his death. He names Carol has his primary beneficiary. Carol rolls over Mike's Roth IRA. Carol now owns the Roth IRA and is treated as the owner; so, she also does not have RMDs..

Like traditional IRA and 401(k) accounts, however, a non-spouse beneficiary of an inherited Roth IRA or 401(k) ***does have RMDs***.

Pensions and Profit-Sharing Plans

Pensions and profit-sharing plans have many of the same issues as traditional IRAs and 401(k)s except they are more complicated, since each pension and profit-sharing plan has unique contractual provisions governing your rights, the disposition of the account and beneficiary designations.

Many clients choose to roll their pension and profit-sharing accounts in a qualified trustee to trustee transfer into an IRA. The federal tax laws governing IRAs are much easier to deal with.

If you have a pension or profit-sharing account, you should seek the advice of your attorney as to the estate planning ramifications of your

particular plan. Your attorney may require the assistance of the defined benefits attorney who assists with the updates and plan administration

Consider This

Carol creates an SRT naming Marcia, Jan and Cindy as the beneficiaries to the inherited Roth IRA account. Carol's estate planning attorney completes the beneficiary designations properly, satisfying the five federal requirements, so that in the year following Carol's death, Marcia, Jan and Cindy can stretch out the Roth IRA distributions over the course of their lifetimes. This allows the girls to only withdraw the RMD, leaving the balance to grow and compound tax-free rather than having to be withdrawn immediately in the year following Carol's death, or over the course of five years following Carol's death, depending upon factors at that time.

A Final Word about IRAs and 401(k)s

The estate planning ramifications and planning strategies associated with IRA and 401(k) accounts are significant enough to warrant a completely separate book on the subject. In fact, we plan to write that book sometime in the near future. This chapter is limited to asset alignment—that is, ensuring that the beneficiary designations of these accounts fits hand in glove with your estate plan.

Hopefully you, the reader, come away with a greater appreciation for the significance of the beneficiary designations and the requisite thought that should go into completing those forms. IRAs, 401(k)s and similar accounts make up an ever-growing percentage of client's portfolios. Many people don't realize that your will and/or trust will not govern the disposition of these accounts.

Moreover, the income tax consequences of easy-to-make mistakes are heightened with these accounts. With marginal federal tax rates as high as 37%, add to that the marginal state income tax rates of your beneficiaries, and you can see how it is easy to lose almost half of the account to the tax man, as well as the opportunity cost of lost tax-deferred growth.

Make the investment of time and knowledge with your estate planning attorney to ensure that these accounts are aligned with your estate plan.

Qualified Annuities

There are, generally, two different types of annuities – qualified and nonqualified. Qualified annuities are those that are owned inside of a qualified, tax-deferred account such as an IRA. Those annuities are generally governed by the same rules that IRA accounts are, so the issues surrounding the beneficiary designations are similar to those of IRA and 401(k) accounts discussed above, with the added twist that the annuity contract is specific to the plan, much like a pension or profit-sharing plan.

To properly plan for the disposition of the annuity, you should provide a copy of the plan document to your estate planning attorney so that you can review your options together.

While the financial planner who sold you the annuity may be a good resource to include in those discussions, understand that financial planners are not attorneys. They don't have a complete grasp of the ramification of income, estate and trust laws and how those play out in a broader sense with the rest of your estate plan.

Nonqualified Annuities

Nonqualified annuities are, by definition, not a part of an IRA or 401(k) account. Annuities receive tax-deferred treatment in that you invest your money into an annuity contract with the insurance company paying you amounts based upon the contractual terms. The growth inside of the annuity, when paid out to you, is recognized as ordinary income as opposed to capital gain. Generally speaking, this is unfavorable since

federal capital gains tax rates are currently capped at just over half of the highest marginal ordinary income tax rate.

When you die, the payout of the annuity may cease, may continue for the lifetime of your surviving spouse, or for a term of years, have a required immediate payout or any combination of those possible outcomes. Every contract is unique.

The beneficiary designation of the annuity contract coupled with the income tax ramifications of the possible payouts are yet another factor to be addressed with your estate planning attorney. He will need a variety of information, including a copy of the annuity contract, a recent statement showing current value and basis, a copy of any beneficiary forms completed, as well as blank beneficiary forms.

We've seen the mistake where clients name their revocable trust as the beneficiary of the nonqualified annuity contract. Unlike IRAs and 401(k)s where the beneficiaries of the trust may qualify for the stretch out of the RMDs over their lifetimes so long as the five federal tax law requirements are satisfied, many annuity contracts will not consider a trust a "person," often resulting in immediate recognition of taxable income.

Nonqualified annuities, consequently, require a good deal of thought when completing the beneficiary designations.

KEY TAKEAWAYS

- WHERE MANY CLIENTS BELIEVE THAT IRA AND 401(K) ACCOUNT BENEFICIARY DESIGNATIONS ARE SIMPLE, THERE ARE A MYRIAD OF INCOME TAX AND ESTATE PLANNING ISSUES TO CONSIDER WHEN COMPLETING THOSE FORMS;
- IT IS IMPORTANT TO CONSIDER WHETHER YOU PLAN FOR YOUR SPOUSE TO COMPLETELY CONTROL YOUR IRA AND 401(K) ACCOUNTS OR WHETHER YOU WANT TO ENSURE THAT OTHER LOVED ONE'S BENEFIT;
- WHILE ROTH ACCOUNTS DO NOT HAVE REQUIRED MINIMUM DISTRIBUTION PROVISIONS DURING THE ACCOUNT OWNER'S LIFE, UPON THE ACCOUNT OWNER'S DEATH, INHERITED TRADITIONAL ACCOUNTS AND INHERITED ROTH ACCOUNTS BOTH HAVE REQUIRED MINIMUM DISTRIBUTIONS FOR NON-SPOUSE BENEFICIARIES;
- NAMING A TRUST AS A BENEFICIARY TO AN IRA OR 401(K) ACCOUNT MANDATES THE SATISFACTION OF FIVE FEDERAL INCOME TAX RULES FOR THE BENEFICIARY OF THE TRUST TO BE ENTITLED TO STRETCH OUT THE REQUIRED MINIMUM DISTRIBUTIONS OF THE ACCOUNT OVER THE BENEFICIARY'S LIFETIME;
- PENSION AND PROFIT-SHARING PLANS ARE UNIQUE CONTRACTS THAT REQUIRE CAREFUL THOUGHT AS TO THEIR DISPOSITION IN YOUR ESTATE PLAN;
- QUALIFIED ANNUITIES ARE THOSE THAT ARE HELD INSIDE A QUALIFIED TAX DEFERRED ACCOUNT SUCH AS AN IRA. WHILE THE ESTATE PLANNING ISSUES ARE SIMILAR TO TRADITIONAL IRA ACCOUNTS, THE BENEFICIARY DESIGNATIONS ARE OFTEN MORE COMPLICATED;
- NONQUALIFIED ANNUITIES ARE PERHAPS THE MOST COMPLICATED WITH WHICH TO PLAN INSIDE OF AN ESTATE PLAN. TYPICALLY, NAMING A TRUST AS BENEFICIARY RESULTS IN ADVERSE INCOME TAX CONSEQUENCES. THE CONTRACTUAL RULES SURROUNDING NONQUALIFIED ANNUITIES ARE ALMOST ALWAYS UNIQUE TO THE CONTRACT ITSELF.

Chapter Six

Irrevocable Trusts

A complete discussion on funding assets into irrevocable trusts goes beyond the intended scope of this book. Rather than ignore the topic completely, however, we thought it would be helpful to distinguish asset alignment as it pertains to revocable trusts, which is the subject of this book, as opposed to irrevocable trusts, covered in this chapter.

Definition of Irrevocable Trusts

An irrevocable trust, generally speaking, cannot be changed, amended or altered by its grantor. Once you sign the trust and transfer assets into the trust, it is usually very difficult, if not impossible, to undo the transaction without adverse legal or tax consequence. This contrasts with your revocable trust where, so long as you are alive and competent, you may put assets into the trust, remove assets from the trust, and sell or gift assets from the trust.

Irrevocable trusts usually are created for the benefit of a loved one other than you. They are used to gift assets, yet protect them from taxes, creditors and/or predators. Examples of these types of trusts include Spousal Lifetime Annuity Trusts (SLATs), Irrevocable Life Insurance Trusts (ILITs), and Educational Trusts for Grandchildren.

In other irrevocable trusts, you may remain a beneficiary, some for life and others for a term of years. Examples of irrevocable trusts with retained interests include Charitable Remainders Trusts (CRTs), Grantor Retained Annuity Trusts (GRATs) and Qualified Personal Residence Trusts (QPRTs).

Consider This

Howard and Marion owned a Wisconsin lake house that they wanted to retain in the family and minimize gift and estate taxes. They deeded the lake house into a Qualified Personal Residence Trust for a term of ten years. During the ten years, Howard and Marion continue as the beneficiaries of the QPRT. At the expiration of the term, their children, Richie and Joanie, take title to the home. If Howard and Marion want to enjoy the home after the termination of the QPRT, they should pay Richie and Joanie fair market value rent or suffer a reversal of the gift tax benefits under federal transfer tax law.

Testamentary Irrevocable Trusts

Your revocable trust usually becomes irrevocable upon your death. If you have a surviving spouse, for example, there might be a testamentary Family/Credit Shelter or Marital Trust created. There might be a formula clause found in your trust that allocates the assets between these testamentary trusts.

Some clients choose not to visit with their estate planning attorney when their spouse dies, not realizing that there's administrative work to accomplish on the deceased spouse's trust. We are writing a book on this subject entitled Legal Matters When a Loved One Dies, that explores this process in more detail.

Consider This

When Howard died, his revocable trust created a Marital Trust benefitting Marion for the rest of her life. Then, upon her death, it continues for Richie and Joanie. Marion's estate planning attorney and his team assisted with the re-titling of the assets in Howard's trust to this Marital Trust. Since Marion is named as the beneficiary of the Marital Trust, she will control the investment and distribution provisions. It is important, however, for legal and tax compliance, to title the assets from Howard's trust to the Marital Trust.

Asset Alignment of Irrevocable Trusts

Many clients don't fully understand irrevocable trusts, and, consequently, often report the assets as if they own the assets for legal and tax purposes. We cannot describe to you the number of times that a client has completed her organizer reporting assets that are (or should properly) be owned in irrevocable trusts rather than as her own.

Consequently, it is crucial to provide your estate planning attorney copies of deeds, brokerage and bank statements. The attorney will be able to review these items and determine how they are properly owned, which will drive his advice.

Consider This

Following Howard's death, Marion reported brokerage accounts owned by the Marital Trust established by Howard's trust as her own. She also reported the Wisconsin lake house property as hers, even though the QPRT terminated and the house had already been properly deeded to Richie and Joanie. This inflated her net worth, initially causing her legal team to overestimate Marion's tax exposure.

Importance of Asset Alignment

When your estate planning attorney reviews your assets and how they are owned, aligning the assets with the estate plan becomes crucial. You can have the best drawn estate plan, prepared by the best attorneys (as with our firm!) but your estate plan may still fail. One of the ways that estate plans commonly fail is when you name the wrong parties to serve as your trustee. We are writing a book on this point which will explore this topic in more detail.

Another common reason your estate plan fails is when your assets aren't properly aligned with the plan. This speaks to all the concepts that this book has reviewed. The assets that should be funded into your revocable living trust should be so funded. Other assets that designate the beneficiary need to be carefully considered and completed. Finally, assets outside of your estate that are owned by irrevocable trusts need to be factored into how they will be distributed to your beneficiaries.

Consider This

Howard and Marion created an Irrevocable Life Insurance Trust that owns a large second to die policy benefitting daughter Joanie. This is with the intention that they leave the remainder of their estate and the family business to son Richie, as the death benefit of the insurance policy balanced everything else out. Howard and Marion failed to inform their estate planning attorney that the insurance was owned by the trust solely benefitting Joanie and didn't provide ownership or beneficiary designations for their attorney to review. When the attorney recommended the distribution of all the other assets, he didn't realize that Joanie would receive a disproportionate share of the estate when he drafted their revocable trust to be split evenly between Richie and Joanie

It is fairly easy to become confused when you have different assets that are owned by different trusts. That's why it is important to review your estate plan annually, and advise your legal team when you have purchased, sold, gifted or transferred assets. Maintaining asset alignment with your estate plan is always important. You'll discover how our unique estate planning process, The Family Estate & Legacy Program® contains a Client Care Program to ensure that, among other things, your assets remain aligned with your estate plan now and into the future when you and your family need it the most.

KEY TAKEAWAYS

- IRREVOCABLE TRUSTS, UNLIKE REVOCABLE TRUSTS, CANNOT BE AMENDED OR CHANGED BY THE GRANTOR WITHOUT ADVERSE LEGAL OR TAX CONSEQUENCES;
- SOME IRREVOCABLE TRUSTS ARE CREATED DURING THE LIFETIME OF THE GRANTOR, WHILE OTHERS (TESTAMENTARY TRUSTS) HAPPEN UPON THE GRANTOR'S DEATH;
- GENERALLY SPEAKING, ONCE YOU TRANSFER ASSETS INTO AN IRREVOCABLE TRUST, YOU NO LONGER OWN THEM, EVEN THOUGH IN CERTAIN TYPES OF IRREVOCABLE TRUSTS YOU MAY BENEFIT FOR YOUR LIFETIME OR A PERIOD OF YEARS;
- IT IS IMPORTANT TO ADVISE YOUR ESTATE PLANNING ATTORNEY WHEN YOU HAVE IRREVOCABLE TRUSTS AND PROVIDE YOUR ATTORNEY AN INVENTORY OF THE ASSETS OWNED BY THOSE TRUSTS.

Chapter Seven

This, That and the Other

There are a variety of other assets that we haven't covered yet, including tangible personal property, copyrights, registered trademarks and intellectual property. Hopefully this book has educated you as to the importance of asset alignment, and a heightened sense of appreciation for your estate planning attorney's role in putting the right asset in the right basket so that your estate plan maximizes its potential, not only for legal and tax purposes, but for family harmony considerations as well.

Tangible Personal Property

Tangible personal property includes most anything you can touch, including a car, boat, wine collection, your clothes, jewelry, furniture and a variety of other assets. Other than cars and boats, most of these assets don't have a deed or title certificate of any kind. They are therefore commonly transferred to trust through a general assignment.

Whether you should transfer your automobile to a trust is a debatable subject. In some states, like Massachusetts, there is a statute whereby automobiles are deemed jointly owned between spouses, even if both names are not on the title. This gives some "built-in" probate protection between spouses. Furthermore, in many states, including Massachusetts, the probate system provides a simplified process if in fact you need to probate a car title. Massachusetts allows for an abbreviated probate, referred to as a "Voluntary Administration" if the total value of your probate assets does not exceed a threshold value, currently $25,000 (excluding the value of the car), as set by the state legislature.

There's a line of thought that you should not transfer your automobile or boat to your trust. Cars and boats can cause terrific personal injury when involved in collisions and accidents. Due to the proliferation of personal injury attorneys, if they notice that your car or boat is owned by a trust, they may immediately jump to the conclusion that you have many assets

that could be used to settle their claim if it exceeds the value of your liability policy.

This again speaks to purchasing an umbrella policy that we covered back in Chapter Three.

Eventually, if a judgment is entered in a lawsuit beyond your insurance coverage, there is a process known as a "deposition in aid of execution" in which the plaintiff's attorney may discover the existence of your trust. So, it is not as if your trust would never be discovered in the event of a catastrophic claim. Nevertheless, the school of thought is not to make things easy for plaintiff's counsel.

The other problem we encounter if ownership of an automobile is transferred to your trust is that the insurance company could consider the trust a business owner may require commercial insurance rates to apply. This could cause a significant increase to your auto insurance premiums.

Boats and Aircrafts

Some boats may be transferred to your trust by a title similar to an automobile while larger boats require a more complicated process through the United States Coast Guard's National Vessel Documentation Center.

Aircraft certifications and title may have to be cleared through the Federal Aviation Administration. A specialist in transferring boats and aircraft may be necessary depending upon the particulars of your vessel.

Intellectual Property

Intellectual property may include books, papers, artistic works, likenesses trademarks, and copyrights. These assets may hold little or great value going forward.

Some are relatively easy to transfer to a trust using an assignment while others require registration with the United States Patent and Trademark Office. We may have to engage the services of an intellectual property attorney to ensure the proper transfer when these assets are involved.

Wrap Up

As you've learned from the contents of this short book, there's a lot to asset alignment. In the Family Estate & Legacy Program®, we understand these issues, providing you comfort and clarity throughout this process.

This book is not written as a guide to asset alignment and funding so that you can perform these tasks on your own. Rather, it is written so that you will be a better-informed client. In our view, an educated client is the best client. As you understand the basics of what we refer to as "asset alignment", you will be in a good position to provide us, your legal team, the information that we need to ensure your estate plan is complete.

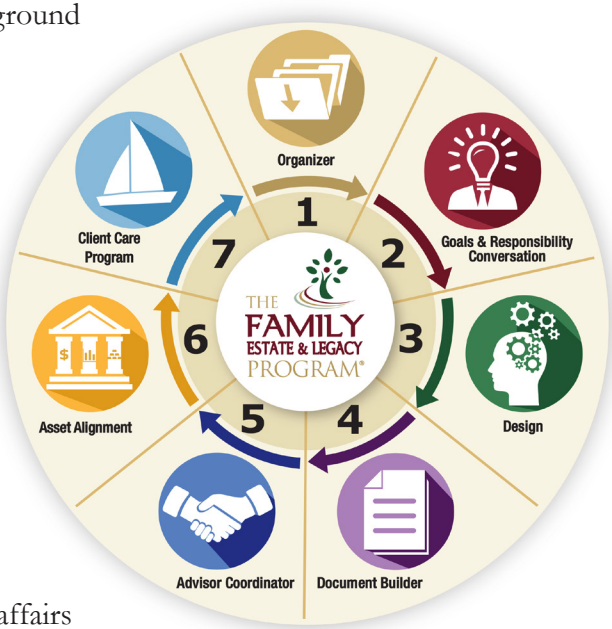
Furthermore, you now appreciate how important it will be to keep your legal team up to date when opening and closing accounts or acquiring new assets. This speaks to the importance of our ongoing Client Care Program, and why, when we forward Client Care Program members our annual letter, it is also important to heed our reminders to inform of us any changes to your asset mix.

Thank you for taking your valuable time to read this book. If you are a client of the firm and would like to pursue this discussion further, including a review of your asset alignment, make sure your Client Care Membership is up to date and contact us for an appointment.

Chapter Eight

The Family Estate & Legacy Program®

We've covered a lot of ground throughout these pages. You've learned why it is important to view your estate plan and asset alignment as an ongoing project as opposed to a once-a-decade (or less) exercise. We've explored how asset alignment is as important as having the best drawn documents and selecting the right trustee to manage your affairs in the event that you can't.



You've learned how various types of assets are treated differently when deciding how to best transfer them into your revocable trust. You've also learned the difference between revocable and irrevocable trusts, and how those differences play out with regard to your assets.

So how do you go about choosing an attorney and a law firm that will navigate these difficult legal, tax and financial waters? To assist you with this important choice, we've created a unique, trademarked process entitled The Family Estate & Legacy Program®. This is a seven-step process that takes you from where you are today to where you need to be for now and into the future

Organizer

The first step is our Client Intake Process including our Client Organizer. You may already be familiar with tax organizers that CPAs send out prior to filing your annual Form 1040 Federal Income Tax Return. Our Client Organizer is similar, except it is geared to gather the information necessary for you to make informed decisions relative to your estate plan. For us, as your legal team, the organizer serves to provide us relevant information to maximize your results.

Completing a personal balance sheet is an important element of our organizer. Some new clients push back at this requirement, wondering why we need this information to plan your estate. Realize that a good estate plan is fashioned to the family situation and the type and value of assets they own. An estate plan for someone whose IRA is a larger portion of their net worth, for example, will look very different than an estate plan for a client who may have commercial real estate, which will look different than one in which a family business makes up a large portion of the net worth. The type of assets and their relative values determines the legal strategies that may or may not work for you and your family.

The attorneys and legal team working under The Family Estate & Legacy Program® understand that spending valuable meeting time gathering information is not the best use of time. When the Client Organizer is instead completed ahead of the initial meeting, the attorney and his client are likely to have a more productive initial consultation. We ask that your completed Client Organizer be returned to our office along with a copy of your current wills and/or trusts at least three business days prior to the initial consultation.

Goals & Responsibility Conversation

We start our initial consultation with a conversation eliciting your goals and concerns. Why are you updating your documents? Did you recently move to Massachusetts? Has your family or financial condition changed? Did you read about tax laws that may affect your family? Are you concerned that one of your children's spouses may have their eyes on your child's future inheritance?

What is it that prompted sitting down with us? We want to hear the answer to that question. That's because we realize how important it is to listen to your goals and concerns before launching into a discussion as to the advantages of revocable trusts or what provisions you might consider for your will.

It is refreshing to be heard, and to voice the concerns you may have about your estate plan. Once those goals and concerns are thoroughly discussed, your legal team is ready to identify legal and tax opportunities available to you and your family.

A knowledgeable professional will break down the many moving parts that go into a first-class estate plan and explain your options in simple, easy to understand language. One of the most significant issues that many attorneys don't spend enough time on is specifically who will act in what capacity inside of your estate plan.

In your revocable living trust, for example, you are normally your own trustee until you are no longer capable of serving. So then who should act? Your spouse, perhaps? Is he or she equipped to manage your investments, run the family business or conduct your affairs as you have throughout your lifetime? If not, how should the legal document be drafted to provide him or her all the help needed? Many are wary of

banks and trust companies, for example. Be reassured there are ways to accomplish these goals without your beneficiaries having to plead to some corporate institution for a distribution.

How are you going to protect yourself during a period of incapacity? Think about those crucial issues to your welfare, who your successor trustee will be, who will hold your durable power of attorney, and who will be making health care decisions for you. Moreover, what powers do you wish to confer on those you name, and what restrictions will be important?

When you leave amounts to your children, other considerations come to the forefront, depending upon their age, financial savvy, marital status and a host of other factors. Attorneys gloss over these issues far too frequently. In The Family Estate & Legacy Program® we take the time to explore all the possibilities, many of which you may not have previously considered.

In fact, another book on this very subject, which will be completed soon – Selecting Your Successor Trustee, is a part of The Family Legacy Series™ used to explore this important topic in depth.

Design

Based upon your Client Organizer and the results from our Goals and Responsibility Conversation, we design your estate plan together. We will work together to design a will or trust package that meets your needs, given your family and financial situation and your goals and concerns. There is no such thing as a "one-size-fits-all" estate plan. The Design element will consider the types of assets you own, how you own them, and the relative tax consequences of your holdings in creating your individualized plan.

Typically, your plan will include a revocable living trust, pour over will, durable power of attorney, health care proxy, living will and a host of other ancillary documents necessary to effectuate a solid foundation.

For those clients who wish to protect large IRA balances for their loved ones, a Standalone Retirement Trust may also figure into the mix.

While many clients may all have these documents, the contents of each document will be specific to you and your loved one's needs. Married clients may have a variety of marital/credit shelter trusts depending upon their goals and the relative values of their estate. Clients who leave amounts to their children and grandchildren may have continuing trusts to protect the inheritance they leave their loved ones.

All of those marital, credit-shelter and continuing trusts will have different provisions depending upon the client's goals and concerns. Some distribution provisions may be drafted more liberally, allowing distributions for most any purpose while others may be drafted to be conservative towards protecting a spendthrift beneficiary, or other issues.

Upon zeroing in on a plan, a fixed fee quote is provided. There is no need to worry about how many hours you are spending with the attorney and legal team. The goal of The Family Estate & Legacy Program® is to provide you comfort and clarity. If you feel that every phone call, every email, and every other contact with the firm will result in a higher fee, you may be unwilling to ask all of your questions.

It's important to us you feel you have adequate time to consider your options during this estate planning process.

Once you sign the Engagement Agreement, we are on to the next stage.

Document Builder

We build all of your documents and send you a written summary and flowchart. The summary and flow chart gives you an easy-to- read, quick reference of your plan. For clients who want the actual trust drafts, we prefer to meet with you to review them.

Our experience is that when we forward the trust drafts themselves (as opposed to the summary and flow chart), our clients feel they must first read and understand the entire documents before they visit with the attorney again. While we strive to write documents that can be easily understood, there are legal and tax concepts that require us to use language found in the statute books or in the tax law that aren't intuitive for those not well versed in these laws.

Once you see the design in black and white, you can change certain details. That is why the review sessions are so valuable.

Once your documents receive your approval, we'll proceed towards signing. Once signed, your documents will be scanned and coded into our system and organized into a binder complete with tabs and flowcharts.

But we're not done yet.

Advisor Coordinator

We realize that you may have a trusted CPA, a financial advisor or business attorney that you would like included in this process. We're happy to include anyone you want. If they are local, they can attend our conferences. If not, or if it is otherwise more convenient, we can video/conference call them into our

conferences.

Remember our ultimate goal is to provide you comfort and clarity. One giant obstacle to accomplishing this goal is when a client is receiving conflicting advice. This problem is eliminated when those individuals that you trust are involved in your estate planning process, taking part at every opportunity. We value their input.

For those clients in transition that are looking for a trusted CPA or financial professional, we can recommend trusted and reliable firms to you. Through our years in practice we have come to know those who may serve you well.

Asset Alignment

Transferring (or "funding") your assets into your revocable trust is time consuming, tedious, and fraught with technicalities. It is natural for clients to procrastinate funding their trusts, but assets that aren't properly funded will not avoid the public probate process. So, we build into The Family Estate & Legacy Program® an Asset Alignment Process that takes care of these details.

Unlike many firms who hand you a sheet of instructions how to transfer (or "fund") your assets into your revocable trust, we do it for you. Our team includes well-trained professionals who are versed in the intricacies of each different financial firm's requirements. They work with you to ensure that everything is in the right "basket" so your estate plan runs smoothly.

With your help, we consider many of the issues that are found in this book to ensure that your assets are aligned with your estate plan.

This is another way that our unique process provides you confidence, comfort and clarity.

Client Care Program

One feature of The Family Estate & Legacy Program® of which we're proudest is our Client Care Program. This unique feature is built to provide you a cost-effective way to ensure that your documents do not fall out of date with the ever-changing legal, tax and financial world.

Many clients stick their estate plans in a drawer for years, if not decades. This often leads to disaster when the client becomes sick or dies. We know that you don't want to visit with your estate planning attorney every year, so we created a way for us to come to you.

The Client Care Program works to ensure that your plan keeps up with the changes to your family and financial situation. When you open a new account or acquire a new asset, our team will work with you to ensure that it is titled correctly and fits into your plan. As we stated in this book, maintaining asset alignment is as important as having the right documents. Assets change over time, so that's why our Client Care Program is so important to the success of your estate plan.

Near the end of each calendar year, you'll receive a written review of your estate plan. We'll advise as to changes in the trust and tax laws, and if such a law affects your plan, Client Care includes the update. Your estate plan is all about you so the year-end review will provide you the opportunity to tell us about any changes to your family or financial condition that may also affect your planning.

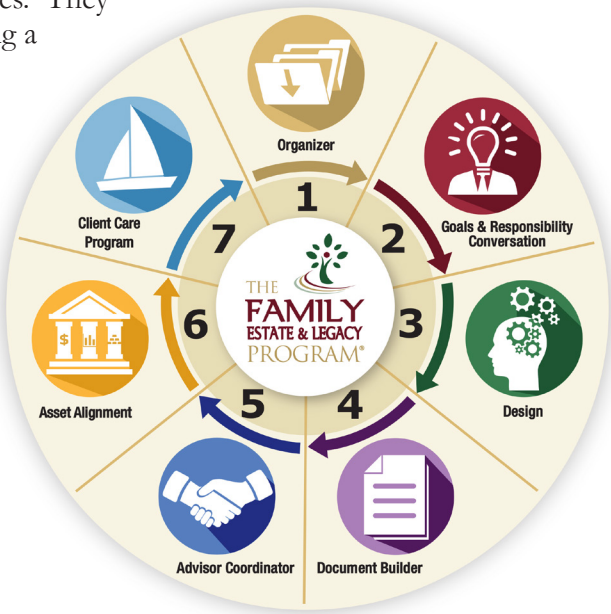
Epilogue

Getting Started

Hopefully these pages have encouraged you to get the most out of your estate plan. If you are interested in beginning your Family Estate & Legacy Program™ journey, please contact our office to schedule your initial consultation and to receive your Client Welcome Packet. We will send you an email to get things started and ask that you complete three easy steps:

1. Take Our Client Mindset Quiz

We understand that our unique Family Estate & Legacy Program, and the commitment we ask of our clients, might not be the right fit for everyone. We have found that clients who possess a certain mindset have the best experience with our firm. These clients view their estate planning as more than an exercise that divides their assets into who gets what. Instead, they appreciate the opportunity to set the stage for family harmony, to protect their loved ones from the dangers of losing or squandering their inheritance and to take advantage of the most up-to-date legal and tax strategies. Most of all, they understand that estate planning is not just done for them, but also for their families. They look forward to building a relationship with us as trusted advisors to whom they and their families can turn in difficult times, when their plan is needed most.



2. Complete Your Client Organizer

It is important that we receive a completed Client Organizer at least three business days prior to our initial conference. The information you provide us is confidential and is very important in order for us to provide you proper legal advice. We will provide you a hard copy of the Client Organizer in your Client Welcome Packet, or a digital one is available with the Initial Client package email you can download and print out to complete.

3. Drop Off or Email us Copies of Your Current Planning Documents

When getting us your Client Organizer, please also either drop-off copies or email PDF copies of your:

- Current will;
- Trust with any amendments;
- Irrevocable trusts;
- Federal Gift Tax Returns Form 709, if applicable;
- Federal Estate Tax Return Form 706 for your spouse, if applicable

If you don't have access to all of these documents, please get us what you can. Please email us a PDF copy if possible, otherwise, hard copies are acceptable and we will scan in these items and return them to you.

About the Author

Kenneth J. Simmons, Jr.

Attorney Kenneth J. Simmons, Jr. is one of the founding partners of Simmons & Schiavo, LLP. He has been helping families with their estate planning needs since 2002. Ken handles all levels of estate planning ranging from basic plans requiring wills, health care proxies and durable powers of attorney to more complex multi-million dollar estates involving marital deduction trust planning, irrevocable life insurance trusts, stretch IRA inheritance trusts, multi-generational dynasty trusts and intentionally defective grantor trusts. Ken's estate planning work also involves the use of limited liability companies to implement gifting programs, charitable remainder trusts, supplemental needs trusts and a number of other complex trust planning vehicles. Over the past decade, Ken has expanded his practice to include elder law and probate administration. Ken counsels his clients in all aspects of long-term care planning, including advising on how to properly protect assets from the costs of long-term care, explaining the benefits of Irrevocable Income Only Trusts, and helping clients to understand the implications of gifting assets. Ken's elder law work also includes completing and filing MassHealth Long Term Care Applications for clients entering or already in a nursing facility or who have a spouse entering a long-term care facility.

Ken obtained his Juris Doctorate from Suffolk University Law School in 2001 where he graduated cum laude in the top 6% of his class. Ken is a member of the Massachusetts Chapter of the National Academy of Elder Law Attorneys and a member of the Boston Estate Planning Council.

Ken lives just outside of Boston with his wife and three children. Ken and his family enjoy snowmobiling, hiking, fishing and Friday night game nights. They love to travel together and have a goal of traveling to all fifty states by the year 2030.

About the Author

Marco A. Schiavo

Attorney Marco A. Schiavo is one of the founding partners of Simmons & Schiavo, LLP and has focused his practice on estate planning and estate administration. In guiding his clients after the loss of a loved one, Marco has personally witnessed the unfortunate impact that the lack of an estate plan can have on families. These experiences continually reaffirm his strong belief in the countless benefits of a well-drafted and well-implemented trust-based estate plan. A proper estate plan provides for a smooth transition of control in the event of a person's disability and provides privacy and ease of property distribution at death by avoiding the costs and delay of the probate court. Marco's primary focus is assisting his clients in preserving the wealth that they have accumulated so that they may pass it on to their loved ones through the use of creditor protection trusts, estate tax minimization techniques, business succession planning and Medicaid/long term care planning. Marco handles all levels of estate planning ranging from basic plans to complex multi-million dollar estates involving marital deduction trust planning, irrevocable life insurance trusts, stretch IRA inheritance trusts, multi-generational dynasty trusts, gifting strategies, charitable remainder trusts, special needs trusts and a number of other advanced trust planning vehicles.

Marco has a passion for business; he received his Bachelor of Science Degree from Babson College with a double major in Finance and International Business Studies. At Suffolk University Law School, Marco focused his law school studies on Estate Planning and Real Estate Law.

Marco lives south of Boston with his wife and three daughters. Marco is fluent in Italian and Spanish. His interests include traveling, home improvement projects, hiking, and most of all, spending time with his family.

About the Author

Craig R. Hersch

Craig R. Hersch is a Florida Bar Board Certified Wills, Trusts & Estates attorney, CPA, and is a founding shareholder and originating board member of a private trust company in Fort Myers, Florida. Mr. Hersch is a principal in his law firm, and has created several trademarked processes tied to his estate planning and administration practice, including The Family Estate & Legacy Program® , The Estate Settlement Program®, The Advanced Planning Expander™ and The Transitional Event Sequence™. All of these unique processes are designed to provide his clients comfort and clarity when navigating the complex legal, tax and financial concerns associated with planning and administering an estate.

In addition to this book, Hersch has authored *Common Cents Estate Planning*, *Legal Matters When a Loved One Dies*, *The Florida Residency & Estate Planning Guide, Selecting Your Trustee*, and *The Estate Planner's Guide to Practice Development*. His work has appeared in several professional journals, including The Practical Tax Lawyer, Trusts & Estates Magazine, and The Florida Bar Journal. Hersch has been a featured lecturer at continuing education programs sponsored by the Florida Bar, the Florida Institute of CPAs, The Estate Planning Councils of Lee & Charlotte Counties and The National Business Institute.

Mr. Hersch writes a nationally published column on practice development for wealthmanagement.com, a web site produced by *Trusts & Estates Magazine*, a prestigious trade journal for lawyers, CPAs and trust officers. His also a member of *Trusts & Estates Magazine* Editorial Advisory Board on The Modern Practice. Moreover, he authors a weekly estate planning column geared to laymen published in Sanibel's Island Sun newspaper and which appears on his firm's blog at www.sbshlaw.com/blog.

He is married to wife Patti, and has three daughters, Gabrielle, Courtney and Madison of whom he is very proud.