PacificCPE

COURSE
40858A

Estate Planning Advice and Team Collaboration

Estate planning requires both technical knowledge and the ability to work alongside attorneys, trustees, and other specialists on behalf of a client. This course covers foundational estate planning strategies and the critical role of building the right advisory team. For CPAs and tax professionals already involved in estate-related conversations, this course reinforces best practices and broadens your ability to add value—whether you're leading the planning process or serving as a key contributor within a larger team.

CREDIT HOURS 2 | FIELD OF STUDY BUSINESS | EXAM QUESTIONS 10

Start Course ↓ | Final Exam Copy ↓

LEARNING ASSIGNMENTS AND OBJECTIVES

Assignment

- Study the full course materials included here.
- Complete the review questions after each chapter.
- Answer 10 final exam questions.
- Final exam is scored immediately, 70% or better passes.
- Certificate of completion is available in your account.
- Failed exams can be retaken free of charge.

Course Objectives

- Recall the characteristics of various trusts.

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Chapter 1: DISPENSING ADVICE ON ESTATE PLANNING

Chapter Objective

After completing this chapter, you should be able to:

- Recall the characteristics of various trusts.

Estate planning strategies are changing. Gone are the days where the parents wanted to ensure specific amounts for their children or other heirs and would sacrifice themselves to make that happen. Historically, the parents would strap themselves financially in order to leave a sizable amount, if possible, equally to their children and perhaps other heirs. Today, more clients are concerned about finally having money set aside for that rainy day so they can do the things they always talked about wanting to do but were not comfortable doing during their working years. So, the approach has changed. This chapter focuses on those strategies you may wish to bring up for your clients to gain the closure they need to feel comfortable.

It is important to understand the big picture so we can help determine the exposures that are present, and help plan potential efficient and effective solutions for the client. Estate planning is a process, as we discussed in Chapter 1 of course 40853A, for the accumulation, conservation, and distribution of your client's estate. Our role is all about education, especially because there are many fallacies in this arena. Having everyone be on board and go through the process together so that expectations are managed properly from the beginning is a great way to start.

When things go astray, the client may possibly incur significant cost and unforeseen issues, which can make things very messy and financially troublesome to work through. An example of this is acting in a certain manner because that's the way it has always been. That may not work going forward. One of the things Bill Carter says he learned from his dad was, "Things change! I know you are doing well today Bill, but things change!" Carter has stated that he definitely understands that today and not only with himself, but also as he sees it playing out with his clients.

Carter shared the story of a client many years ago who against the firm's advice gave away most of their money to their kids. The client's rationale was that if we need it, the children will give it back to us. There were several children involved. Unfortunately, things turned bad for the parents, with unexpected things happening for which they were not able to support their living standard going forward. When the client approached each of the kids to ask for the money back, they were turned down. Things happen!

Rattiner's Secrets

Talk about things being different today, I have many clients who visit my office stating, "Jeff, my goal is to -$0- out at death! We're not concerned about leaving our money to anyone." Obviously, that's not a realistic assumption, but here's the point. Many clients today feel they did a lot in providing their children with a strong and proper background and support system to move forward and they should be able to take those skill sets and family values to the next level. The clients don't want their kids to become entitled to their money. They don't want the children to have a change of plans and stop working as hard or in trying to advance themselves and take care of their families with the future inheritance in the background. The clients just don't want their children to rely solely on them, because as we said earlier, life happens! The best line I heard from a client was, "Jeff, I want the last check I ever write to bounce!"

Carter believes leaving funds to charity will present a better planning option if the client or family member may need to access funds in the future. He does not see his clients leaving their assets equally to all the children. For many reasons, the client needs to think through what will work out best for the couple who owns those assets. Many times, private discussions involving a single family member or perhaps including other family members or likely heirs will need to be had.

There are a lot of issues to work around in estate planning. There are many interpretations from active planners in the field. I'm not a believer in liquidating a client's assets to get the money out of the estate for the majority of clients. Yes, it does make sense for certain high-net-worth individuals, and in a variety of situations, but specialty attention will be needed for that type of planning.

Working as Part of the Appropriate Estate Planning Team for the Client

- Estate Planning Mistakes
- Property Titling
- Probate
- Wills
- Powers of Attorney
- Trusts
- Tax Implications
- Gross Estate
- Sources for Estate Liquidity
- Valuation Issues
- Powers of Appointment
- Deferral and Minimization of Estate Taxes
- Charitable Transfers
- Generation-skipping Transfer Tax (GSTT)
- Intra-family and Other Business Transfer Techniques
- Postmortem Estate Planning Techniques

With the estate and gift tax exclusion at very high amounts – $13,990,000 (2025) indexed each year, and double that for a couple ($27,980,000) – the overwhelming majority of estate tax return filers will not be subject to paying estate tax. The OBBBA set the exclusion at $15 million (single) and $30 million for a couple for 2026. These numbers are indexed for inflation thereafter. In fact, to get a handle on how many people will be affected when it comes to paying estate tax, the last set of numbers I found online through taxpolicycenter.org showed about 7,100 estate tax returns would be filed for people who died in 2023, of which only about 4,000 would be taxable – less than 0.2% of the 2.8 million people expected to die in that year. Surviving spouses are generally exempt from these taxes, regardless of the value of the estate or inheritance. A dozen states impose their own estate taxes, and six have inheritance taxes, both of which kick in at lower threshold amounts than the federal estate tax.

The popular viewpoint from representation of high-net-worth clients is this: “As people get older, there will continue to be trends toward gift giving. Having your client’s children benefit from their wealth and receiving family assets before the parents reach age 90 (vs. traditional inheritance). The argument goes as to what kind of benefit will children get if they receive inheritances very late in their lifetimes?” says Daniel Rubin, Partner, Moses & Singer, LLP, New York.

Brody says we need to stay intertwined with the estate, and gift transfer tax of the current larger amounts. “The use of irrevocable life insurance trusts (ILITs) no longer works as well as revocable trusts, which are easier to modify or terminate into a better and more modern trust. The intersection of insurance and estate planning can be found by buying life insurance on the lives of the settlor, spouse, and children for the benefit of the grandchildren through a combined trust.”

Rattiner’s Secrets

The biggest risks imposed upon the client by gifting money early is that since people are living longer today compared with any prior period in history, there is a really good chance the client can run out of money. When I started in this business, we would plan out for clients to have retirement funds through the mid-80s. Today most people plan through age 100 and even longer. If these original retirement needs analysis projections have never been adjusted, then issues of your clients literally running out of money could occur.

Several years ago, I attended my youngest son’s college graduation and the master of ceremonies addressing the graduates said that more than 50% of that year’s graduates would be living past the age of 100. Pretty amazing! Working off that logic, with people living longer, there may be serious medical issues that arise that are not present in today’s world, which could create expensive types of treatments. In other words, unplanned medical expenses or any type of expenses could arise and that could put a damper on finances if that money was given away previously.

Another issue is that gifting does not provide a step-up in basis on the transferred property. The donee (recipient) continues using the adjusted basis of the donor. If assets are in the family for many years, such as a primary residence, or any appreciating asset, chances are that there will have been a significant increase in value. That will probably result in a potential capital gains issue when the donee sells the asset.

And finally, with the number of clients actually paying estate tax, other than annual gifting strategies by both spouses to take advantage of the annual exclusion, Section 529 college funding, helping those children, grandchildren, and family members where help is necessary, and things of that nature, for families whose estates are under the threshold, there are no estate tax benefits for removing assets from their estate for those clients.

When giving away assets, “don’t give away cash or low-basis assets,” says Brody. “Give away assets likely to appreciate.”

ESTATE PLANNING MISTAKES

By definition, since we are not practicing as attorneys but as financial planners, drafting any documentation including contracts and instruments would be considered the “unauthorized

practice of law." This should be done by attorneys to assist the client with possible strategies, and that is where we come in. We can help identify those issues and leave to the experts the way to fine-tune what should be done for the client. Part of that strategy is in identifying those weaknesses that are inconsistent with the client's objectives stated in the financial plan (see Chapter 1 of course 40853A), which sounds an alarm that the client needs immediate assistance.

Rattiner's Secrets

My biggest concern in the entire estate planning process is the lack of a coordinated game plan. We should take the lead and then work with a coordinated team, including an attorney, a CPA, trust officer, the client's health professional(s), investment and insurance professional (if we do not provide that service), elder care professional, funeral home representative, and others who have a direct impact in that client's life (during and afterwards). We should be cc'd on all correspondence and perhaps attend certain meetings, where necessary, to make sure we are all on the same page. My issue is that if we are not all together initially, we will not end up all together representing that client's best interests.

While there could be many possibilities included here, some of the more common ones where we can get involved are the following.

1. **Location of all the client's relevant information** (see below), including separate funeral instructions and other important information that may not be known by the family.
2. **Selection of the wrong executor.** This can be a problem if that individual is not skilled in understanding the particular issues, doesn't understand the financial risk or implications, is not compensated, is lackadaisical, or even has a conflict of interest.
3. **Failure to write or update a valid will.** Wills should be updated every so often to make sure things are in alignment, such as tax law, family changes, or other legal changes. This includes designating the proper heirs, and updating the will for the client's marriage, divorce, or separation. Not having a valid will could make the existing will obsolete and have the client die intestate (subject to state law). In addition, if the client changes their domicile from, let's say, a common law state to a community property state or vice versa, there could be issues that will not have been addressed by the older will.
4. **Lack of liquidity.** If there are no liquid funds available to settle the estate through insurance, self-funding, or cash reserve, and only illiquid assets are available, those assets may need to be sold at a discount to pay the tax.
5. **Leaving everything to or holding assets jointly with the spouse.** The issue here is it puts the assets in the surviving spouse's name, which could increase the assets in that spouse's estate. While naming the spouse could work if the client considers portability (see below) or is under

the threshold, there are many safeguards that are not available with this strategy. Setting up a bypass trust could be a better option.

6. **Failure to name contingent beneficiaries.** If the primary beneficiary is deceased and no contingent beneficiaries are named, and the client is concerned about privacy, the assets would be part of the gross and also probate estates.
7. **Inappropriate ownership or beneficiaries of life insurance.** If the client owns the policy in their own name, it would be part of that person's estate, which depending on the size of [INDENT1] the estate may or may not matter. Also, if someone is designated as the beneficiary of the policy and is not ready to handle the proceeds, that could become an issue.
8. **Inappropriate titling of property.** This helps ensure that the right people receive the right property at the right time. This could be between non-spouses and others where the property owners don't understand the differences.
9. **Not having a buy-sell agreement for the business owner.** See Chapter 2 of course 40859A.

Rattiner's Secrets

I have each of my clients set up a folder for all of their documents and other necessities to help prepare for and be available at their death. I'm sure there are better names you can think of, but I have my clients call it the "Death folder" mainly for the reason that if children or others are looking for the client's information, especially after the fact, it is easier to locate the one folder where everything is located and filed together –wills, trusts, powers of attorney, passwords, key computer information, other legal documents, investment and bank statements, retirement account information, insurance policies, safety deposit box keys, funeral arrangements, and perhaps a zip drive of important and relevant documents including account name, address, account numbers, contact person, account balances, beneficiaries, or other things that may be relevant. Saving all of this information in the cloud would provide a good backup.

PROPERTY TITLING

Community property versus noncommunity property

There are two types of property law systems in the United States: common law (noncommunity property) states and those states that have adopted a community property approach. The basic difference between the two systems is when property rights "vest" (are not subject to restriction or forfeiture) in each spouse.

Common law

In common law states (the majority of states), the spouse does not acquire a vested interest in the property of their (the other) spouse until some point in the future, typically divorce, separation, or death. Such spouse is said to have an "incomplete, unfinished and interrupted interest" in the

property of the other spouse which is completed when the one spouse outlives the other. As a result, in a common law state, it is possible for one spouse to title property individually in their own name, and to the exclusion of ownership rights in the other spouse. In contrast, this is not possible in a community property state.

Community property

In community property states (there are nine of them plus Alaska, which has both), each spouse owns an immediate, vested one-half interest in all property acquired during the course of the marriage. Therefore, it is not possible for one spouse to title property in their own name alone (and to the exclusion of the other spouse). All income and assets acquired with that income are deemed one-half owned by each spouse, regardless of who actually earned the income or contributed to the property. If property is acquired in a community property state and then the couple moves to a common law state, the property is treated as community property.

Practical example: Brian and Lisa live in Texas, a community property state. Brian acquires some real property in that state and wants to title it in his own name individually. Operationally, he may do so, but legally, Lisa has a vested one-half interest in this same property, restricting Brian from full and complete ownership. Therefore, the titling in Bob's individual name makes no legal difference since Brian and Lisa own the property "in the community."

Rattiner's Secrets

In multiple marriage situations, ensuring the couple enters the marriage with a pre-nuptial agreement could help protect against certain pre-marital assets and other separate property from being considered as community property.

You should note that nine states (Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin) are considered community property. Finally, the state of Alaska permits married couples to elect to treat property acquired during the marriage as community property.

Community property is all property that "has been acquired by the efforts of either spouse during their marriage." This includes all property acquired during marriage by either spouse even if the funds to buy the property are earned by only one spouse. However, there is a notable exception to this rule: if property is acquired by one spouse during marriage by gift, devise, bequest, or inheritance, it is considered to be their separate property and the other spouse does not have a vested one-half interest. The same result occurs when property is "brought to" the marriage by one spouse; in other words, if they owned the property before marriage, it is considered to be separate property. The only exception to that is if the property is commingled. Then the property will belong to both spouses.