

Legacy Planning

By Cal Brown
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As Dr. Evil discovered in the first Austin Powers movie, \$1 million isn't what it used to be. In 1981, the Economic Recovery Tax Act phased in an increase in the estate tax exemption from \$175,625 to \$600,000 over subsequent years. Today, it is \$2 million per person, and in 2008 will go to \$3.5 million, barring any changes to the law.

Dr. Evil didn't know about legacy planning, either. Legacy planning is not merely minimizing the tax hit and maximizing the amount of money passed on to future generations. It also involves the spiritual, intellectual and ethical development of family members. This kind of planning recognizes that wealth extends beyond a net worth statement; in addition, emotional strength, spiritual maturity, ethical principles and wisdom are all components of true wealth.

For years, our firm has made sure that clients obtain four basic estate planning documents: pour-over will, revocable living trust, advance medical directive and general power of attorney. For in-state clients, we accomplish this via a relationship with a leading estate planning attorney, at a reduced flat rate. We collect data and educate clients and the attorney drafts documents based on a questionnaire he designed.

Last year, after several clients died unexpectedly, we increased our focus on estate planning with a comprehensive analysis of clients' situations with respect to death, incapacity, creditor protection and recent legislative changes. My colleague, Glenn Kautt, addressed the importance of proper planning in "[Flying Blind](#)," in the March 2006 issue of *Financial Planning*.

Family Values

Even with all this planning in place, we realized it was not enough for everyone. We have a large number of clients whose net worth is in excess of the exemption amount. Many already use strategies such as irrevocable trusts, family limited partnerships, irrevocable life insurance trusts, grantor retained annuity trusts and other techniques.

We decided to institutionalize a process for advanced estate planning--called legacy planning--for those clients with a net worth of \$5 million and up. Why \$5 million? At that level, there is the potential for significant estate tax liability. In addition, clients realize that their children will inherit substantial wealth, and are concerned how they will handle it.

The unique feature of our legacy planning--and the key to its success--is our focus on not implementing a strategy. Rather, the focus is to determine what clients want for their families and for themselves. There may or may not be a strategy, product or implementation at the end of the legacy planning process. So, what's the point? The point is to make sure the client remains financially independent. An additional objective may be for the client to leave a legacy--a good name.

Let's review the term "legacy." Your legacy is what you did with your money, and what you did with your life. Legacy planning is a means of passing on values,

ethics, wisdom and purpose to your heirs. Many people want to use their wealth as a force for good in the world, as well as in their families.

For them, success is more than just money; they want to help their family remain harmonious and cohesive. They want their children and succeeding generations to lead fulfilling and meaningful lives; they want to cultivate their potential, to make a difference in their community.

Objectives of Legacy Planning

There are three clear objectives in legacy planning:

- Ensuring financial independence for the client and spouse;
- Leaving a family legacy--a specific and appropriate inheritance for the children; and
- Having a positive social impact, be it voluntarily through charitable giving or involuntarily through estate taxes.

The first step is running a financial independence analysis on a client. It's essential that the client believe that he or she will continue to be financially independent. If the client doesn't believe this, or if the advisor has doubts, further planning may be futile. Why, for instance, would clients give to charity or begin gifting to children if they think they'll run out of money?

The second step is determining how much wealth each child should receive. Bill Gates and Warren Buffett have publicly stated their kids will not inherit all of their wealth. Gates has said he is giving his children a specific dollar amount. Clients must think in the same way.

The third and final step is allocating the remaining wealth to taxes or charitable causes. Most experienced planners know estate taxes can easily be reduced to zero--simply pass on the applicable exclusion amount to the children and give the excess to charity. Because there is no limit in the estate tax calculation for charitable giving (unlike the income tax adjusted gross income limitations), the

estate tax can be completely eliminated. But giving it all away is rarely what clients want.

For our clients, the starting point for legacy planning is to determine one primary objective. There can be only one. Here are some typical examples:

- financial independence--maximize clients' access to financial resources regardless of the impact on wealth transfer
- eliminate or minimize estate taxes
- maximize the size of the inheritance to family heirs
- maximize charitable giving
- establish an inheritance amount, then a charitable giving amount

Once we know the primary objective, we capture the client's values, goals, philosophy, preferences and attitudes. A family mission statement codifies the client's thinking on these issues. To construct this statement, we use a questionnaire, a synopsis and a family history.

We provide an exhaustive questionnaire to each client. If the client is a couple, each person completes it separately. The advisor then uses the responses to create a synopsis.

After the questionnaire, the clients' next step is to write a family history. The family's wealth did not magically appear. How did it get here? What did the parents and the grandparents do to obtain it? What are or were the characters of these progenitors? Through the writing of this biography, the values and philosophy of the family begin to emerge. When they read this history, the children and the grandchildren may--perhaps for the first time--begin to respect their wealth rather than take it for granted.

The family history is the centerpiece of the family mission statement. Wills, trusts and other documents are the what, how, when and to whom of estate planning. The family mission statement is the why. It takes into account the values, ideals,

ethics, spirituality and morals of all who have come before and its goal is to achieve a desired vision for the family.

A word of caution: There must be no preconceived notion of a product sale. Legacy planning is not a revenue-raising endeavor. In fact, it is a cost to the advisor in terms of time and effort, unless the advisor charges a fee. If clients get the notion that they are being pushed into a "pet" strategy or product solution, there's a good chance planning will be compromised.

The Bottom Line

Once legacy planning is complete, there are many benefits for clients, their children and the planner. Clients experience a great sense of relief; they have the calm assurance that their wealth and values will be transferred in accordance with their wishes. They understand the ramifications of their decisions, and perhaps for the first time in a nonconfrontational way, they are able to communicate to their children their life's story and important values.

The client's children may or may not be part of the legacy planning process. Either way, they'll receive their inheritance according to their parents' wishes, as well as a written family mission statement that answers the one question most children ask: "Why did you do this?" This statement helps heirs understand the reasons behind their parents' decisions and actions.

The planner benefits as well. Once the family mission statement is complete, it will be obvious to an experienced planner what strategies, documents or other solutions should be put into place. The main benefit is a much stronger client relationship, which leads to client retention and possibly client referrals. Another advantage to advisors is protection from lawsuits. If the parents did not want to minimize estate taxes or they decided against a long-term care policy, and this

was fully discussed and recorded, then the probability of the children prevailing in a lawsuit against the advisor is very low.

Legacy planning isn't for every client, but for many, it may just be what the doctor ordered.

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