FORE!!! Estate Planning Is a Lot Like Golf: It's All in the Follow-Through!!!

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I. Introduction

Estate Planning is more than just signing documents. That's just the beginning. How can you, as trusted advisors, ***add value*** to your client relationships and ensure their wishes are not frustrated? Here are some things to consider.

II. Find and review the documents

A. Where are the documents?
   1. Does client have original Will?
   2. Do agents, doctors, hospitals have copies of health care documents?
   3. Do successor fiduciaries know where documents are kept?
   4. Law firms may have policies about shredding files after certain number of years.

B. Does the distribution scheme work? Does the client understand it? Check the document language.
   1. Per stirpes v. per capita? Is language clear?
   2. Ademption (Prob. Code §2107.33, §2107.36)
      (a) What happens if a specific gift does not exist? Does the document direct what happens?
      (b) What if there isn't enough cash to make a specific cash gift?
   3. Anti-lapse (Prob. Code §2107.52)
      (a) What if a beneficiary predeceases the decedent?
      (b) The document should state what happens
      (c) Ohio statute is still ambiguous
   4. Former spouses Prob. Code §2107.33
      (a) State laws differ on whether they take (Ohio says "no.")
      (b) But marriage doesn't change terms of Will (Prob. Code §2107.34)

C. Make sure executor/trustee succession works
   1. Who can remove?
   2. Who can appoint?
   3. Trust protector - pros and cons

D. Consistency among all planning documents

1. Assets passing through trusts, Wills, beneficiary designations, joint tenancy, pay-on-death
2. Treating children equally? Equitably?
3. Business interests v. non-business interests

III. Should the documents be updated?

A. Changes in family circumstances

1. Deaths, marriages, divorces
2. Are beneficiaries no longer minors?
3. New grandchildren
4. Gender fluidity issues
5. Religious considerations

B. Changes in financial circumstances

1. Need more or less tax planning (changes in exemptions)
2. New business
3. Newly retired

C. Change in state of residence

1. Can situs be changed?
2. New Wills and/or powers of attorney may be needed

D. Changes in tax laws

1. Old A/B trusts
2. Higher exemptions expire at end of 2025
3. Retirement plan distributions changed with SECURE and new Proposed Regulations - 10-year rule and exceptions
4. Volatility in Washington D.C.

IV. Check asset titles

A. Avoid probate

1. Are appropriate assets titled in trust?
2. Are non-trust assets held in a manner that avoids probate? (TOD, POD, joint, etc.)
3. Do beneficiary designations reflect client's current wishes?
4. Joint tenancy - pros and cons
    - (a) With spouses, avoids probate on 1st death only
    - (b) Adding children for "convenience" is not very convenient
    - (c) Joint tenant's debts can be satisfied

B. View in connection with general plan

1. Only assets held in trust pass through trust
2. Beneficiary designations trump Will and trust provisions
3. TOD, POD trumps Will and trust provisions but ***caution*** as to property insurance!

C. Planning for unusual assets
   1. Artwork, collections
   2. Guns
   3. On-line assets (Facebook accounts, photos)
   4. On-line access to bank accounts
   5. Bitcoin and other crypto-currency
D. Issues with property insurance and TOD beneficiary
E. Has client re-financed residence? Check if transferred out of trust.

V. Making gifts

A. Annual gifts of $16,000 per person not counted against lifetime exemption
B. Certain educational and medical expenses ***if paid directly*** not counted against lifetime exemption

VI. Sophisticated techniques

A. What was the purpose of the technique, and is it still appropriate?
   1. Review of insurance trusts/policies that were for estate tax payments
   2. Review of charitable trusts
B. Are advisors communicating so that technique is treated consistently?
   1. Accountants, lawyers, insurance brokers, financial advisors should be aware of all planning
   2. Example – installment sale to grantor trust – income allocation to proper parties
   3. Income/estate/gift tax returns should show transaction consistently
C. Business planning
   1. Is entity classification under state law consistent with its classification for Federal tax purposes?
   2. Have all tax elections been properly made?
   3. Are S-Corp requirements being observed? Are there appropriate provisions in any estate planning documents?
   4. Is there a succession plan? Buy-sell agreement?
   5. Insurance in place for buy-outs?
   6. Is there a buy-sell agreement and a succession plan in place?
   7. Are all business documents up-to-date? All tax reporting up to date?

VII. Conclusion

Hopefully, it is clear that estate planning is more than just documents! It is vital to communicate with your clients and their other trusted advisors to be certain that your clients' true wishes are fulfilled and to mitigate any unforeseen consequences.