PRACTICAL PLANNING
Advice that truly helps

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GOOD PLANNING GONE BAD

Often planning is implemented on the advice of good advisors and with the best intentions. However, many times this planning falls short because of the failure to "manage" it. Here is a list of mistakes we see so regularly that we feel compelled to point them out.

Unfunded Revocable Trusts

Revocable trusts, always a tool of the estate planner, are becoming more common. Among the benefits are that they can help avoid probate. However, this is only accomplished by funding the trust: retitling investment accounts, re-deeding real estate, assigning partnership interests, etc. Avoiding probate will not be accomplished by leaving assets out of the trust.

Uncoordinated Beneficiary Designations

Many people hold assets that pass per beneficiary designation: IRAs, 401(k)s, insurance policies, annuities, and other assets. Failing to coordinate these beneficiary designations with the overall estate plan can create many tax and non-tax issues.

Not Addressing Reward Miles and Points

Reward programs such as airlines, hotels and credit cards have exploded over the past 20 years. It is not uncommon to see someone rack up hundreds of thousands of points. What happens to these points when someone dies? There is no clear answer and policies among companies vary. But two things are certain. One, you should mention such points in your estate documents. And two, think before you act. Some programs, such as Marriott's, specifically allow for transfer upon death and have a procedure for that. Others, such as United Airlines, do not have a policy and seem to prohibit transfer; although,there might still be ways to accomplish transfer. Takeaway: these points are valuable "assets" so don't lose them.

Forgetting about Powers of Appointment

Seemingly showing up in every trust we look at, powers of appointments appear to be default clauses used by today's draftspersons. However, we often find that the powerholders do not know what a power of appointment is or that they even hold one. As powerful tools in estate planning, an education of clients as to the use and existence of such powers is imperative.

Naming the Wrong Trustee

Many considerations go into picking a trustee and most people seem to have a good handle on this. However, one consideration often overlooked is the affect the residence of a trustee can have on the state taxation of the trust. More than one-third of states will tax a trust based solely, or partly, on the residence of a trustee. For example, a trust with no nexus to and otherwise not subject to tax in California, will be taxed in California solely by the fact that the trustee is a California resident. Therefore, know where your trustee lives (and where your trustee is moving to) and how state laws might affect the taxation of the trust.

Inefficient Education Funding

One of most marketed financial planning techniques over the past 25 years is the 529 plan; hailed as the "must have" education funding vehicle. Although 529 plans can be beneficial, they are not the right vehicle for all. Depending on many factors, including net worth, contributors, potential beneficiaries, need, etc., other tools including UTMAs and gift trusts might prove more beneficial.

Forgetting About Local Transfer Tax

Using real estate in estate planning is common and can be beneficial. The structuring generally focuses on maximizing estate and income tax savings. However, often-missed taxes are local transfer taxes. Many local jurisdictions have real estate transfer taxes that will apply to any transfer of real estate; even if such transfer is for no consideration such as a gift. For example, Peconic Bay in New York assesses a 2% transfer tax on all real estate transfers. There might be special exemptions available to avoid these taxes. Make sure you are working with advisors with local knowledge or you might end up with a surprise tax bill.

"Stale" Life Insurance Policies

Too often we see clients who have life insurance policies "in a drawer." Policies that were obtained years ago, where significant cash value might have built up, and/or where old mortality tables apply. Such policies run the risk of lapsing, causing taxable events, not being aligned with current planning or needs, or being inefficient investments. Many of these problems can be fixed, and coverage often enhanced; but to do so the policies need to "come out of the drawer."

Getting the Wrong Insurance

You need life insurance! We have all heard this more than once in our lives. Although seemingly a sales pitch, the statement is probably true at one time. Assuming this is true, the question is what type of life insurance do I need? That really depends on what you are trying to solve for today and into the future. We find working with advisors who are not tied to a particular company of products, being consultants and not just salespeople, often will help ensure that you get the right insurance for you and your family.

Low Insurance Deductibles

On its' face, low auto and home insurance deductibles sound like a great idea, but this often can work against you. For example, low deductibles often mean higher annual premiums. In addition, too low of deductibles actually might preclude you from certain coverage and benefits. It's especially relevant today, where in the insurance marketplace non-renewals and/or significant premium increases are occurring due to frequent and/or severe claims. Use this general rule: treat insurance as "catastrophe coverage" and therefore increase deductibles and decrease claims.

Failing to Update Property, Casualty and Liability Insurance

People's lives seem to be constantly changing and at a faster rate than ever before. We find these changes often result in gap or non-coverage issues. For example, this happens when moving a home into a revocable trust; or allowing household help to drive a family car; or renting out your house for a month. The lesson here is that insurance is not a transaction or a "set it and forget it" exercise. Instead it is something that needs to change as your life changes. To comprehensively help, we often recommend working with a relationship driven insurance consultant who performs frequent and continued reviews to ensure you are properly covered.

"Un-Registered Entities"

LLCs, partnerships, and other corporate entities are a common tool of the estate planner and business owner. There are many potential benefits these entities can provide. Although, we often see incorrect "filing management" of these entities resulting in suspension or forfeiture, mis/non-registration, and other issues that may cause fines, penalties, and termination. This is particularly prevalent with entities that are "operating" in multiple states.

Using Delaware as the Rule

The laws of Delaware, and several others states including Nevada and South Dakota, tend to be beneficial when establishing a trust or LLC (or other corporate entity). However, establishing your family LLC, or real estate LLC, in Delaware does not always make sense. For example, for a family LLC where management is in Massachusetts, the LLC will need to register, file annually, pay fees, and have a registered agent in both Delaware and Massachusetts. We propose, in this situation, where the family LLC is purely a family investment vehicle there are no benefits unique to Delaware that can not be achieved by establishing it in Massachusetts. And by doing so, you would save annually on costs and administration work.

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