Another Nudge Regarding Estate Planning – September 2023

Most everyone with substantial assets is aware that they *should* have an estate plan; yet fewer than 35% of families have Wills.

Procrastination is the most common excuse. Some may have concluded that between today and when a Will will be called upon, their life circumstances will be so different that a Will prepared today will be a waste of money and perhaps create confusion. Others would do it now, if they knew where to start and who to engage for assistance. Fair enough; if you start down the wrong path or with the wrong advisor, it may become a multi-year process at considerable expense.

Finally, as a practical matter, some couples without children and an estate that is not complex, might argue that the local *intestate* rules align perfectly with their own wishes (although they may still face Probate). This is a weak excuse, because putting your mind to your estate plan will almost certainly reveal complications – e.g., how is your spouse going to access that offshore bank or brokerage account quickly when the broker has never heard of them and your spouse only faintly recalls its existence?

Add in one or more children, and it is irresponsible not to have dealt with guardianship. If you are going to go that far, why not deal with the straightforward bequests as well?

Practical Hurdles

For "high net-worth" families with complex estates, complex family dynamics and/or global assets, there is usually no resistance to seeking qualified professionals to assist them in reviewing or creating a comprehensive estate plan.

Well-written estate planning guides may be a suitable starting place. However, families considering an estate planning exercise may be put off by suggestions or structures (e.g., trusts) that are expensive to set-up, expensive to maintain, and may still ultimately result in disputes as their family dynamics change over time.

Multiple Wills can be an appropriate response when dealing with real assets situated across differing legal systems. Again, the cost may discourage some.

Even Family Offices, with no real financial constraints, can find it difficult to round up a team of professionals, with the relevant local expertise, that can actually collaborate and produce a final plan in a timely manner at an appropriate cost.

While this will be *heresy* to many advisors, it may be that many people are letting the search for a perfect solution stand in the way of at least a helpful solution. At least chip away at it. From an earlier post, you should at least consider having:

1) a comprehensive list of assets, accounts (with numbers, contact names / #s) kept updated and safe and within reach of your spouse / executor / beneficiary(ies);
2) a Will dealing with the major assets, even if it might leave some international rule of law questions outstanding – at least your intentions will be known;
3) Thought about practical steps outside of a Will – e.g., where appropriate, change bank / investment accounts to jointly-held or add designated beneficiaries, ensure insurance contracts are up to date, execute durable Powers of Attorney.

Take a few minutes to imagine how everything is going to work out if you were to pass unexpectedly.

Is someone going to inherent an asset with a liability (including a tax liability) without the ability to pay that tax without selling the asset.

This could happen with large real estate properties or shares in a family business. Many countries have an inheritance tax regime. While smaller estates are often exempted, you should consider whether your plan, or *no plan*, will generate significant taxes for your beneficiaries or estate.

You may have to incorporate life insurance into a trust, or identify certain beneficiaries, in order to allow the smooth transfer of assets.

Practical Problems

Even having developed a good estate plan may not be the end of it. You need to review the plan periodically, particularly after major life events, to see that it still holds together and would meet your aspirations.

Many couples have made arrangements to avoid Probate by having all major assets, including bank accounts held as joint accounts or with a named beneficiary where applicable. Then, in a moment of carelessness, a new account is created that is not jointly held and this, upon passing, pushes that part of the Estate into probate (if it is material) and holds up or complicates the financial plan for a period.

Older couples anticipating one or both becoming incapacitated prepare Power of Attorney's -- giving the other spouse or a younger family member broad authority to act on their behalf. Even when properly prepared, your bank might be unprepared to accept instructions under the PoA. Many bank employees are not well-trained in dealing with family members armed with PoAs.

On top of everything else going on with the passing of a parent, the time wasted simply getting instructions acted upon or gaining access to funds, can be very frustrating; especially when prudent planning was put in place.

If the PoA is there to protect an older family member that is at risk of become incapacitated, consider taking that person, along with the PoA, into the bank and meet the manager and explain the purposes before incapacitation occurs.

We do not provide estate planning advice and therefore have no real iron in the fire – in terms of fees or type of outcomes. But we deal frequently with client worries and discomforts about a wide range of issues impacting what they will leave for their family. While there are risk management approaches to dampen financial market uncertainties, risk on ultimate returns remains. However, it would be a shame to have addressed those risks and costs that are controllable through an appropriate estate plan.

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