101 (AND MORE) REASONS WHY CLIENTS SHOULD SEEK PLANNING ASSISTANCE NOW

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Introduction

A concern common to all estate and financial planners is "How Do I Get My Clients to Realize How Important it is to Do Planning?" Regardless of how knowledgeable and skillful the planner may be, getting in front of a client and motivating that client to take positive actions is an ongoing challenge for all of us. Clients do not have to be especially wealthy or old or ill to need planning. Many planning issues are best addressed when assets are modest and youth and good health are present. We have compiled a list of suggested reasons to plan and issues to be addressed thanks to the contributions of a number of talented people working as financial planners, accountants, attorneys, trust officers and insurance agents (to whom we gratefully acknowledge their contributions) in an effort to share our collective best ideas to motivate both clients and their planners to get the planning process underway.

The suggestions below are not intended to be listed in any order of suggested importance – nor does their inclusion in one category suggest they are in any way exclusive to that category. To the contrary – financial, estate, tax, retirement and insurance planning is a collaborative process. Many skills and talents are needed to be brought together to best serve the interests of our clients.

Financial Planning Considerations

1. Consider the client's basic asset and liability position. What is the plan for the short and long term future?
2. Develop a family balance sheet, listing assets, liabilities, values and forms of property ownership.
3. Develop a family tree with birth dates, residences, contact information so that family members, heirs and fiduciaries can be located in the event of an emergency or a death.
4. Create a master list of passwords and user IDs for all of a client's computer stored information.
5. Address asset allocation and diversification.
6. Re-evaluate risk tolerance issues.
7. Re-balance an investment portfolio.
8. Address issues of the client's domicile – has everything been done to establish domicile in one state clearly, and are all documents in place to reflect that domicile?
9. Discuss social security benefits and the choices available as to timing eligibility claims.
10. Address generally education planning, including college savings plans (529 plans) and the use of trusts for education planning.
11. Determine the combination of college savings vehicles (529, custodial account, trust, Coverdell Plan, Roth IRA) most appropriate for the client's family.
12. Examine the investment mix of assets in a college savings plan relative to a child's age.
13. Evaluate the family's Expected Family Contribution for college costs. Undertake planning to better address this.
14. Exercise income shifting strategies between parents and children to lower the overall cost of college expenses – or at least obtain additional aid.
15. Discuss generally a range of beneficiary designation issues, including those required for life insurance policies, retirement plans, individual retirement accounts, stock options and deferred compensation plans.
16. Review issues involving titling to assets, such as in individual name, joint names, community property, and tenancy in common.
17. Facilitate coordination of the planning team – financial advisor, accountant, attorney, insurance professional, trust officer.

18. Review federal and state income tax returns to look for planning ideas and avoid possible problems.
19. Discuss issues of family governance and how to prepare children for an inheritance.
20. Consider issues relating to a business startup venture, including form of organization, financing options and financial projections for the business.
21. Evaluate the requirements of a suggested franchise venture.
22. Consider a client's charitable objectives and evaluate alternative methods of fulfilling those objectives (outright cash gifts, gifts of appreciated property. IRA transfers to charity, use of donor advised funds, charitable gift annuities or private foundations, recommendations of split-interest charitable trusts).
23. Counsel clients following the death of a spouse, especially addressing income resources and liquidity requirements.
24. Determine if an inheritance will be available, and counsel how it should be managed.
25. Discuss flexible planning alternatives (disclaimers, limited powers of appointment, etc.) in view of the uncertainty of current law.
26. Discuss how to avoid potential family disharmony after the death of a family member.
27. Discuss the tax planning aspects of a pending divorce.
28. Discuss the advisability and use of prenuptial and postnuptial agreements.
29. Discuss tax issues that may arise in a foreclosure, short sale or bankruptcy.
30. Discuss the most efficient use of capital loss carryovers, charitable contribution carryovers, suspended passive activity losses and credits.
31. Examine the client's income tax return issues to determine if any planning can reduce alternative minimum tax exposure.
32. Review and assess a severance package.
33. Address the exercise of stock options and other compensation awards. With higher income tax rates possible, timing may be important. Consider "harvesting" gains before tax rates increase.
34. Address the tax planning aspects of the sale of a primary residence or vacation home.
35. Reassess plans following a dramatic change in circumstances (such as a natural disaster, long-term unemployment, etc.).
36. Discuss issues involving possible emigration and expatriation planning.
37. Discuss concepts of valuation discounts for clients with ownership interests in businesses or properties – especially while the law allows discounting.
38. Discuss incorporating alternative asset classes (such as commodities and/or currencies) into a financial plan that are not typically correlated to stock market performance to possibly reduce volatility.
39. Discuss the management of an award or settlement from a lawsuit.
40. Discuss the unique tax and estate planning issues facing gay persons, same sex couples and single parent households, including differences in state and federal rules arising from the Defense of Marriage Act.

Estate Planning Considerations

1. Review and update the estate plan and the client's planning objectives in general.
2. Recognize that the federal tax laws have changed and that existing planning documents may no longer be effective or desirable.
3. Review existing estate planning documents to understand how they will work.
4. Discuss appropriate fiduciaries – executors (personal representatives), trustees and guardians.
5. Address successors – beneficiaries and fiduciaries – in case they are needed.
6. Discuss the special planning opportunities – and possible pitfalls of the federal gift, estate and generation-skipping transfer tax changes effective for 2011 and 2012.
7. Point out the scheduled changes in the federal gift, estate and generation-skipping transfer tax laws for 2013 that may not be advantageous.
8. Address possible state estate or inheritance tax issues, especially where the federal and state tax laws diverge, and the estate plan should address both federal and state issues.

9. Discuss and recommend gifting programs for children and grandchildren and to recommend various techniques as appropriate (custodial accounts, outright gifts, loans, trusts, more sophisticated leveraged gifting techniques).
10. Discuss planning for a special needs child and the use of a special needs trust.
11. Consider the possibility that a parent being assisted by a child will survive the child and what trusts should be created to address this.
12. Prepare a trust for financial management in the case of disability.
13. Discuss using a living trust for titling real estate owned by the client in multiple jurisdictions to avoid ancillary probate issues, as well as home state probate concerns.
14. Draft a buy-sell agreement for a business to put into effect a business succession plan.
15. Look specifically at a client's Will following changes in the law, changes in family circumstances or relocation to a new state.
16. Look specifically at a client's Revocable Trust following changes in the law, changes in family circumstances or relocation to a new state.
17. Put into effect a charitable giving plan, especially if it involves the creation of charitable trusts or private foundations.
18. Determine the proper disposition of the tangible assets of the family – artwork, jewelry, antiques, collectibles, etc.
19. Consider planning for "special" family situations – such as "blended" families, adoption, step children, etc.
20. Make certain that the client's documents address an appropriate "pathway" for a disclaimed interest in property if the disclaimer technique is being used.
21. Make certain that beneficiary elections are being properly handled in spousal and marital trusts.
22. Modify existing documents and plans in the event of a divorce.
23. Consider planning loans to family members while the published federal interest rates are at or near record low levels.
24. Bring to the attention of the client (in appropriate situations) some of the more "sophisticated" estate planning techniques that remain available in 2011 – which may possibly be limited or eliminated by future tax laws (GRATs, QPRTs, SCINs, Defective Grantor Trusts, Dynasty Trusts, etc.).
25. Evaluate the different state laws regarding asset protection, income taxation and estate and inheritance taxation, and recommend the best location(s) for the situs of a trust.
26. Determine generally the estate planning effect of a birth, death, marriage or divorce on estate planning documents, IRA and qualified retirement plan benefits, life insurance and annuities. Revise the estate plan accordingly, and coordinate the other issues with the appropriate professionals.
27. Explain the new "portability" rules of the estate tax exemption, and point out the advantages and disadvantages of these rules.
28. Coordinate the assets a person has that pass under a will with those assets passing outside of a will – with special attention to the interests of beneficiaries and the allocation of state and federal transfer tax burdens.
29. Consider, where allowed and appropriate "decanting" (i.e. modifying) an existing irrevocable trust to better comply with the intentions of the trust grantor or to address unanticipated changes in circumstances.
30. Address generally creditor protection issues, such as homestead protection from claims of creditors or the use of a domestic asset protection trust.

Retirement Planning Considerations

1. Address what is the plan – and how has it changed if asset values or family relationships have changed.
2. Review all of the client's beneficiary designations – are they still applicable? Has naming one's estate been avoided?
3. Determine if annual plan contributions have been made and if contribution opportunities have been maximized.

4. Discuss the benefits of IRA and Roth IRA contributions.
5. Consider the merits of converting an IRA to a Roth IRA.
6. Consider the recharacterization of a Roth IRA to a traditional IRA.
7. Ascertain that required minimum distribution rules are being complied with.
8. Recommend exceptions to the 10% penalty for early withdrawal of retirement plan assets when the client has a need for the cash.
9. Recommend consideration of the "stretch out" advantages of naming the youngest available family members as beneficiaries of retirement plans.
10. Advise a client turning age 70 about minimum distributions – and the choice of when to take a distribution upon attaining age 70 ½.
11. Advice a non-company owner client turning 70 and still employed - that minimum distributions from a qualified plan (but not from an IRA) can be delayed until retirement.
12. Discuss annuities, including the option of partial annuitization.

Insurance Planning Considerations

1. Consider planning for possible disability – short-term and long-term disability insurance.
2. Determine if life insurance will be included in the client's taxable estate and possibly subject to unnecessary estate tax.
3. Review the insured's health situation to see if premiums can be reduced.
4. Review the beneficiary designation forms – are all decisions still appropriate?
5. Determine if the amount of life insurance on hand is sufficient for income replacement if the breadwinner of the family dies.
6. Review the entire list of necessary liability insurance policies – home ownership and contents, automobile, professional liability, umbrella liability.
7. Determine the correct ownership and beneficiary designations of existing policies among the insured, spouse, children and irrevocable life insurance trust.
8. Examine if a Crummey power is part of the life insurance plan, and if all notice requirements have been satisfied.
9. Review recent premium projections to determine if current premium levels are adequate to maintain the policy for the rest of the client's life.
10. Check out the financial strength rating of your insurer to make sure it is among the top performing of all insurance companies.
11. Analyze the advantages of the cash value of life insurance as both an asset protection vehicle and as a category of asset exempt from the increased Medicare tax of 2013.
12. Generally evaluate the liquidity needs that can be provided by different life insurance products, such as whole life insurance, term life insurance, universal life insurance, variable life insurance and survivorship (second to die) life insurance.
13. Address all relevant tax rules including the grandfathered benefits of pre-1986 policies.
14. Determine if insurance is needed in a buy-sell program, and evaluating the merits of a cross-ownership situation vs. an entity buy-out situation.
15. Determine if any business planning with life insurance will raise issues under the transfer for value rules.
16. Determine if life insurance in place is owned by a C corporation that will cause problems with the corporate alternative minimum tax.
17. Determine if all existing life insurance policies remain necessary, and what to do with those no longer needed or desired.
18. Advise clients in financial difficulty what can be done to preserve their life insurance coverage.
19. Advise a client desiring to gift a life insurance policy of the three year "look back" rule for transfers of existing policies.
20. Advise a client acquiring a new life insurance policy to have it owned from the outset in an irrevocable trust to avoid the three year "look back" rule.

Long-Term Care Planning Considerations

1. Discuss long-term care insurance and state programs for long-term care.
2. Address Medicaid eligibility planning and other government benefits availability.
3. Prepare or revise a medical directive, health care proxy or living will.
4. Make certain a current durable power of attorney has been considered and prepared, especially in light of the law changes made in some states.
5. Explain the difference between a standard durable power of attorney and a springing durable power of attorney.
6. Discuss annuities as protected family assets in Medicaid planning.
7. Discuss issues arising in the care or support of a disabled parent, including trust planning if the child predeceases the parent.
8. Consider long-term planning for a disabled child if the parent dies.
9. Explore care issues related to Alzheimer's disease and other possible long-term illnesses.
10. Make certain that Medicare is applied for in a timely manner to avoid future penalties.

Year-End Tax Planning Considerations

1. Consider the "standard" planning of accelerating deductions and deferring income.
2. Also consider the expectation of higher income tax rates and the 3.8% Medicare tax on net investment income for 2013. Perhaps begin planning for this sooner rather than at the end of 2012.
3. Coordinate, if possible, regular income tax and alternative minimum tax liability issues.
4. Prepay expenses such as estimated state income taxes and property taxes, keeping in mind the effect of such strategies on alternative minimum tax issues.
5. Take advantage of the various tax law opportunities that are scheduled to expire at the end of 2011 unless further extended (Section 179 allowances, bonus depreciation, charitable gifts from IRAs, teacher classroom expense payments, etc).
6. Assess what to do about mutual funds that have declined in value, but will still pay out capital gains.
7. Plan aggressively with certain S corporation opportunities. The 2010 Act eliminated the built-in gains tax for 2011 tax years of S corporations if five years have passed since the corporation was a C corporation prior to 2011. This opportunity, unless extended, will expire after 2011.
8. Realize capital gains sooner rather than later – and defer capital losses. If the tax rates increase, better to realize the gains while the rate is 15% and defer the losses to a year when the rate will be higher.
9. Consider a conversion of a traditional IRA plan to a Roth IRA before year end. If income tax rates increase, this will be a positive move. If the value of the converted account declines, the recharacterization from the Roth IRA to the traditional IRA by October 15, 2012 (assuming an extended Form 1040) remains a viable option.
10. Take advantage of the "perfect storm" of estate planning opportunity while it is still available. Interest rates are low, values are depressed, discounts are still available, exemptions are generous and tax rates are low. All of this may cease to be available in the future if wealthy taxpayers and the planning techniques they favor are targeted for change.