

INSIGHT ON ESTATE PLANNING



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A slice of life

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ESTATE PLANNING PITFALL

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The sandwich generation: A slice of life

Do you feel like you're pulled between the pressing needs of your elderly parents and your own children? If so, you're part of the "sandwich generation," the term coined to describe Baby Boomers who are often stuck in the middle. This position can lead to frustration, anguish and even financial loss.

But the worst thing you can do is panic. By adopting a plan of action, you can ease some of the pressure and ensure that the most critical issues are addressed. Although there'll likely be some bumps and bruises along the way, this should provide more peace of mind than you would have otherwise enjoyed.

A meeting of the minds

First, let's start with the "bottom" part of the sandwich, your children. Assuming they're still in their formative years, make them your top priority. At this stage, you'll still have most of the control over the decisions affecting their lives. These involve personal choices that are different for every family.

The "upper" half of the sandwich can be more problematic. Depending on their health status and other factors, including finances, your parents may resist your efforts to assist them. They may be oblivious to changes or dismissive of your concerns. And their attitude might range from being cooperative to highly resistant.

The first thing to do, and perhaps the most important, is to initiate a family meeting.

Don't forget about your needs

As part of the sandwich generation, the obstacles you face may overwhelm you, especially if you have elderly parents who require financial or health care assistance. It's easy to lose sight of yourself.

Stay focused on your own needs. Are you saving enough for your children's college education and your own retirement? Do you have a will and power of attorney in place for you and your spouse? What about other estate planning devices? Try to make things easier for your children so they might avoid some of the turmoil that you're going through.

Invite all the key players — your parents, siblings and, as appropriate, their spouses, at the least — to the gathering. This could be difficult to arrange, especially if certain relatives reside in far-flung places, but it helps if you can meet face-to-face.

What should you discuss? Cover the entire estate planning gamut. This isn't the time to be evasive — the dialogue should be frank and honest. Many issues can be sensitive and emotions can run high, so be prepared for some hand-wringing or pushback.

In all probability, you won't be able to accomplish all of your objectives in a single session. Consider meeting again with as many of the other parties as possible. In fact, you might broaden the circle to include your professional estate planner. Take as much time as you need to work things out.

Pieces of the puzzle

Of course, once you develop a concerted approach, you'll need to implement the main concepts. Typically, this requires the drafting of certain estate planning documents that meet legal requirements. The complete list will vary family-to-family, but here are some basic components:

Will. If a legally valid will has been executed, your parents' assets will be distributed in the manner described within. In addition, an existing will may have to be modified or replaced due to extenuating circumstances. For instance, your parents might want to add a grandchild to the list of beneficiaries or change direction due to a divorce in the family. Review the last updated version of the will periodically.

Durable power of attorney. This document authorizes someone to handle your parents' affairs and health care decisions in the event of disability or incompetence. This might be you or a sibling. Typically, the power of attorney, which expires on death, is coordinated with a living will and other health care directives.

Letter of instructions. Although it isn't legally binding, the letter can be as important as a will. It generally provides an inventory and location of assets; account numbers for securities, retirement plans and IRAs and insurance policies; and a list of professional contacts. It may also be used to state personal preferences, such as funeral arrangements.

Living will. A living will spells out your parents' desires relating to life-sustaining measures in the event of a terminal illness. It says what means should be used, and not used, but doesn't provide legal authority for anyone to



act on their behalf. For this reason, it may be coupled with a health care power of attorney.

Revocable living trust. By transferring assets to a revocable living trust, your parents can continue to manage those assets while they are still alive. A revocable living trust avoids probate, keeps personal information private and allocates the trust assets to one's heirs.

Depending on their health status and other factors, including finances, your parents may resist your efforts to assist them.

Open lines of communication

Remember that communication is a two-way street. Talk to your parents directly and listen carefully to how they respond. In addition, build some flexibility into your plan so that the family can react quickly to health changes and other events. Contact your estate planning advisor for additional planning techniques if you are a member of the sandwich generation. •

Is a charitable IRA rollover a viable option?

While working with an advisor to update her estate plan, Susan asked about charitable giving strategies. Because Susan has a significant amount of deferred taxable income in her IRA, her advisor suggested making qualified charitable distributions (QCDs) from her IRA. Also called charitable IRA rollovers, this technique can be particularly valuable if you don't itemize deductions or if your adjustable gross income (AGI) is high enough to reduce the value of charitable deductions.

QCDs in a nutshell

At the end of 2015, Congress reinstated — and made permanent — charitable IRA rollovers. If you're age 70½ or older and plan to make charitable donations this year, a charitable rollover can provide significant tax benefits. It allows you to transfer up to \$100,000 per year directly from your IRA to a qualified charity without including that amount in your AGI.

Before QCDs, people who wanted to use their IRAs to fund charitable donations typically would take a taxable distribution, write a check to their favorite charity and deduct the donation on their tax returns.

The problem with this approach is that the charitable income tax deduction may not fully offset the tax on the distribution. For one thing, the deduction isn't available at all if you don't itemize, and some states don't allow charitable deductions for state income tax purposes. Even if you itemize, charitable deductions are limited to 50% of your AGI for the year (or less, depending on the type of donation). Unused deductions may be carried over for up to five years and

used to offset income in those years (subject to the same limits).

Another potential disadvantage is that taxable IRA distributions increase your AGI, which can:

- Increase taxes on your Social Security benefits,
- Trigger the 3.8% Medicare tax on net investment income, which kicks in after your modified AGI hits \$200,000 (\$250,000 for joint filers),
- Decrease your itemized deductions, which begin to phase out after your AGI reaches \$259,400 (\$311,300 for joint filers), and
- Raise your Medicare premiums.

Because it bypasses AGI, a QCD avoids all of these limitations. Plus, it applies toward your required minimum distributions (RMDs) for the year — a big advantage if you don't need IRA funds for living expenses.

Understand QCD requirements

QCDs offer valuable benefits, but it's important to understand their requirements to avoid costly tax mistakes. In addition to minimum age and maximum contribution limits, the requirements include:

Traditional or Roth IRAs only. QCDs aren't available for inherited IRAs, IRAs that are part of a Simplified Employee Pension (SEP) plan or a Savings Incentive Match Plan for Employees (SIMPLE), or other employer-provided retirement accounts. It may be possible, however, to move funds from an employer plan into an IRA (through a tax-free rollover) and then use the IRA to make a QCD.



Eligible charities only. The donation must be received by a public charity, a private operating foundation or a “conduit” private foundation. Donations to private nonoperating foundations, supporting organizations and donor advised funds aren’t eligible.

Direct transfers only. The IRA must distribute the funds directly to the charity. If it makes the check out to you, it’s not a QCD, even if you endorse it over to the charity.

Deferred taxable income only. A QCD must consist of deferred taxable income — that is, funds that otherwise would be taxable if distributed to you. It doesn’t include distributions that are attributable to nondeductible contributions to a traditional IRA or to otherwise tax-free

distributions from a Roth IRA. For this reason, Roth IRAs generally aren’t good candidates for QCDs, unless distributions would otherwise be taxable (for example, because the account is less than five years old).

Fully deductible gifts only. To be a QCD, a donation must be “otherwise deductible.” In other words, the gift would be fully deductible (without regard to AGI limits) had you made it with non-IRA assets. If you receive something of value from the charity in exchange for your gift, it’s not a QCD.

Acknowledgment required. The charity that receives the distribution must provide you with the same type of written acknowledgment required to substantiate other types of charitable donations. Failure to obtain the acknowledgment will invalidate a QCD.

Choosing the right strategy

After weighing the upsides and downsides of various charitable giving strategies with her advisor, Susan decided that QCDs made sense for her. But that may not be the case in your particular situation. Ask your advisor for more details on QCDs before taking action. •

Fortify your estate plan against undue influence claims

Of course, you expect the declarations in your will to be carried out, as required by law. Usually, that’s exactly what happens. However, at other times, your will could be contested and your true intentions defeated if someone is found to have exerted “undue influence” over your decisions.

Undue influence defined

Undue influence is an act of persuasion that overcomes the free will and judgment of another person. It may include exhortations, insinuations, flattery, trickery and deception.

Frequently, undue influence happens when an elderly individual, who may or may not have



all of his or her bearings, is convinced to change provisions in a will or otherwise suddenly rewards another person, such as a caretaker. This type of deceit has on more than one occasion been alleged by the children of a divorced parent who claim that the spouse of a second marriage has convinced the parent to “cut them out of the will” or reduce their inheritances.

Conversely, not all influence is “undue.” For instance, it’s perfectly reasonable for a child or close friend to advise an elderly person to sell off assets that have peaked in value or a vacation home that’s no longer being used. It’s usually up to a court to decide if the “suggestion” constitutes undue influence.

But don’t confuse undue influence with “duress.” Duress is the use of force, or the threat of force, to coerce someone into taking

an unintended action. It’s a crime that’s punishable by authorities.

Elements of undue influence

Generally, an interested party lodges a claim for undue influence when a deceased person’s will is being probated. To be successful, he or she typically must prove the following elements:

- The will distributes assets in a way that wouldn’t be reasonably anticipated. For instance, the will might leave out close family members without any explanation, while including virtual strangers.
- The deceased relied on or trusted the person who allegedly exerted undue influence.
- The deceased’s physical or mental condition made him or her susceptible to undue influence.
- The accused person benefits from changes in the will or some other suspicious transaction.

Protect against claims

While you’re of sound mind and body, there are several steps you can take to protect your estate against undue influence claims. These practical suggestions may ensure that the objectives in your will are met:

Establishing competency. The best way to do this is to draft your estate plan while you’re still in reasonably good health. Arrange for a physical examination around the time your will is executed. This is equivalent to a physician “signing off” that you’re competent.

Communicating clearly with family. Claims of undue influence may arise when relatives are blindsided after you’re gone. Let them know your intentions as soon as possible

and explain your reasoning. These discussions may be corroborated by your will or a letter of instruction detailing your wishes.

Also, consider adding a no-contest clause to your will. This provision penalizes someone for unsuccessfully contesting the content of your will. However, you don't want to go overboard: If you suspect a relative may challenge your competency, you still might arrange for that person to receive some assets in any event.

The benefit of the doubt

Of course, there are no guarantees that your name won't be dragged through the mud in open court, despite these precautions. Nevertheless, the steps outlined above may avoid confrontations and place interested parties on notice that you've addressed the situation. The mere fact that you've taken action will be recognized in your favor. Contact your estate planning advisor if you're concerned that your estate may someday come under an undue influence claim. •

ESTATE PLANNING PITFALL

You haven't coordinated your health care directives

The best-laid plans can go astray. For estate planning purposes, the main complication as you grow older may be the condition of your health. Even if you've been healthy your entire life, you may suddenly be struck by a debilitating illness or injury.

Fortunately, you can take precautions relating to your future health care by preparing health care directives for your family and physicians to follow. But the legal documents used in planning could contradict each other or otherwise lead to confusion.

The two main types of directives to consider are:

A living will. This states when treatment should be withdrawn or continued when you're terminally ill or unconscious. However, these documents can be misinterpreted by physicians and other professionals or may be too vague to be of much use.

A durable health care power of attorney. Also referred to as a health care proxy,



this appoints someone to act on your behalf regarding your health care decisions. It generally assigns more responsibility to the designated agent than a living will does as to end-of-life decisions.

Other health-care-related instructions may be included in a regular will, but a living will or power of attorney may supersede the will, based on state law. Also, you may indicate your health care preferences in a letter of instruction accompanying your will, but that document has no legal authority.

The best approach is to coordinate all your relevant estate planning documents to provide a clear approach for your situation. Make sure that everyone concerned is on the same page as far as the direction you want to take.

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Located in South Miami, with a satellite office in Key West, Guttenmacher, Bohatch & Peñaranda P.A. services clients across the Gold Coast, offering fully bilingual capability. For further information about the firm and a no-obligation consultation, call us at 305-666-1040.

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