



# Financial Advisory Services

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## Love, Money and Control Basic Estate Planning for the Procrastinator

*“I don’t need an estate plan now; I’m too young!”*

*“I know I should have an estate plan, but it can wait; I have more important things to worry about.”*

*“Estate plans are for the very wealthy; I don’t have enough to need one.”*

If you’ve been putting off estate planning for whatever reason, then think again.

Somewhere, USA., Cindy was the only daughter of John and Ann Jones. When she was married at age 23 to her high school sweetheart, Alan, John and Ann decided to help the newlyweds by purchasing their first home for them. They weren’t billionaires, but what wealth they had, they wanted to share with Cindy while they could enjoy it, too. Tragically, Cindy and Alan were in an automobile accident soon after. Cindy died instantly; Alan hung on, but he, too, died three days later. Once John and Ann were able to function and to sort Cindy’s affairs

out, they discovered that the house, which the couple owned jointly, now belonged to Alan’s parents. John and Ann could have prevented such a result with proper estate planning.

Somewhere Else, U.S.A., Eric Smith, a 43-year-old executive at Widget industries, Inc., worked and played hard. He and his wife of 20 years had three children, aged 18, 15 and 10. They had a vacation condo in Arizona, and Eric dabbled in the real estate market and owned rental properties in Colorado and Arizona, all of which he had purchased in his own name. Eric worked out often at the company’s health facility. It was a surprise to all when he collapsed from a stroke and was left incapacitated. He had no estate plan. His wife, Amanda, was at a total loss when inquiries came in from tenants of his rental properties; nor had she ever been involved in preparing the tax returns or investing Eric’s assets.

*Estate planning has more to do with protecting loved ones than*



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*avoiding estate taxes.* Sure, estate taxes should be a concern if one's assets are sufficiently large enough to warrant it, but it's only one of many issues.

Think about it. If you were no longer available or able to be in control of your family's financial well-being, what would they do? What would you want to provide for them? While each of us will have some specific requirements, for most, the answers fall within the following seven wishes:

1. To transfer my wealth to those I intend to receive it in the most efficient manner possible with the least amount of monetary drain;
2. To provide for my spouse and my family in the event of my/our incapacity;
3. To maintain a harmonious family relationship;
4. To protect my wealth from excessive taxes (estate and/or income taxes);
5. To protect children from themselves and others (including overbearing in-laws);
6. To protect my wealth for my family for as long as they might need it;
7. Above all, for my spouse and I to be financially secure for now and the rest of our lives.

How can one insure that these wishes are fulfilled? We have provided a simple action plan for you.

## ESTATE PLANNING CHECKLIST

### Prepare a Financial Plan.

Secure your own and your spouse's financial well-being by preparing a financial plan taking into account future objectives and goals.

### Take inventory of your assets and how they are titled.

If you've done a financial plan, you will already have this accomplished. If not, you'll need to understand the extent of your assets to determine whether

or not you are subject to estate taxes. You must include everything you and your spouse own, including life insurance, annuities, retirement plans and assets you own jointly with each other and with your children.

Ask your Commerce financial advisor for an "*Estate Planning Questionnaire and Record Keeper*". This will not only help you to take inventory of your assets and analyze how your assets are titled, but also prompt you to explore questions to prepare for your visit to your attorney.

### Choose a competent attorney.

Be sure the attorney you choose is well versed in estate planning and is easy to communicate with. Your Commerce financial advisor can give you recommendations for you to interview.

### Create a revocable trust(s) for you and your spouse.

A revocable trust is an entity that you create to hold and manage your assets. Because you create it, you are the sculptor that crafts how your assets will be managed, for and by whom. You entrust your assets to this entity because you have created the framework that the trustee, who manages the trust, must follow. While you are alive and able, you are yourself the trustee and manage the assets as you have always done. When something befalls you, as it did in Eric's case, your trust document will name a successor trustee to manage the assets for you and your family.

### Choose a competent trustee.

The first impulse for most who have begun the estate planning process is to choose a relative to act as a successor trustee. If a child is too young, then choose Uncle Bob. If the children are old enough, choose the first-born. Wait! Ponder a moment. Think about the financial decisions you make on a regular basis. Remember the "fun" you have every April collecting your statements and 1099s in order to prepare your taxes. Reflect back on the time you had to evaluate the purchase of a new car or whether to rent one. Are these burdens that you wish to put on the shoulders of someone who already has those burdens for their own finances? Remember two things: (1) Being a successor trustee is not an honor; it is in fact a heavy responsibility;

and (2) the individual you choose, because they are the most competent (your daughter, the lawyer), is most likely the individual with the least amount of time to spare (your daughter, the lawyer who works 8 hours a day and juggles three kids, to boot.)

Use the worksheet below to help you choose a competent trustee.

<b>RATING SCALE: 0 = Not capable; 1 = Might be able to do it; 2 = Barely competent; 3 = Fairly competent; 4 = Competent; 5 = The best</b>			
	Family Member	Attorney or CPA	Corporate Trustee
Investment decisions			
Record keeping			
Timely bill payment			
Determine investment strategy			
Evaluate beneficiary needs			
Act fairly to all heirs			
Prepare and file tax returns			
Willingness/available time			

- Be sure your assets are titled in your trust and your beneficiary designations conform to your estate plan.

So often, well-intended individuals visit the attorney to draft their estate planning documents and then fail to actually re-register assets in trust name. You would be shocked if your next door neighbor was able to sell your home simply by engaging a real estate agent and providing a sales contract, would you not? No, she cannot sell a home she doesn't own. So don't be surprised when the trustee of your trust is unable to sell your stocks that are in an account that you have failed to take out of your name and to register in the name of your trust. Until your trust owns the asset, your trustee can have no control over it.

You must also review the beneficiary designations of your insurance policies, your retirement plans, your joint assets, and any transfer on death assets you might own. If you have named only one of your three children on an old insurance policy, that lucky child will

be entitled to the entire proceeds even though your will or trust divides your assets equally between all three of your children. And certainly don't name your estate as the beneficiary or you will have created an unnecessary probate proceeding.

- Consider the role of long-term care insurance.

You have already provided for a successor trustee to manage your assets in the event of your incapacity. Do you have the funds available to care for you and your spouse in that event as well?

Quite possibly, you have sufficient assets to self-insure in the event of catastrophic illness. Certainly, you have worked hard to accumulate your assets and they should be used for you and your spouse's benefit even if long-term care might dissipate your wealth entirely. If you happen to be a little more generous with regard to your children than you need to be, or if your funds will only insure mediocre care, while additional funds could ensure a substantially finer facility, then perhaps you might find long-term care insurance of benefit.

There are many new policies available and Commerce Insurance Services can help you find the right policy for you.

## **BASIC ESTATE TAX SAVINGS TECHNIQUES**

If your assets exceed or may exceed \$2,000,000, then you should consider certain estate tax savings vehicles.

- Credit Shelter Trust.

Also known as a "family trust", "B trust of the A-B trust", the credit shelter trust is generally only for married couples. Its purpose is to allow both spouses to take advantage of the current \$2,000,000 estate tax exemption. A couple with \$4,000,000 should be able to avoid estate tax given that each individual is entitled to protect up to \$2,000,000 from estate tax. However, when the first spouse dies, if all assets transfer to the surviving spouse, as they would if everything is held jointly, the surviving spouse now has \$4,000,000 of assets and can only protect \$2,000,000, resulting in some \$900,000 of unnecessary estate tax.

The credit shelter trust is created by including terms in the revocable trust which basically provides that the first \$2,000,000 of assets (or whatever the amount of the exemption happens to be at the time of the first death) is to be set aside in a separate trust for the ultimate benefit of the couple's children. But while the surviving spouse is alive, those trust assets will be available to her and the trustee may pay her income and principal if she needs it.

*As of January 1, 2009, the estate tax exemption increases to \$3,500,000, and a couple should be able to exclude up to \$7,000,000 with the aid of a credit shelter trust.*

#### Annual exclusion gifts.

If your estate may exceed the \$2,000,000 mark (if you are single) or the \$4,000,000 mark (if you are married and have included a credit shelter trust in your plan), you may want to consider using one of the most powerful and flexible of estate savings techniques. The annual exclusion gift allows you to give up to \$12,000 per year to any individual(s) without any gift tax consequences and without reducing your estate tax exemption. As a couple, you may combine your exemptions so that a total of \$24,000 could be given to any individual. (If you are in a second marriage situation, you can give your daughter \$24,000 of your own funds so long as your spouse consents to allow you to use her exemption. She, too, can give \$24,000 to her own child, with your consent to use your exemption. Yet neither of you actually need to contribute to the gift to the child that does not belong to you.) Annual exclusion gifts are flexible because they can be made on an annual basis, or you may reduce the gift from year to year, or even stop making the gifts entirely. No gifting program should be embarked upon without evaluating the effect on your own financial future.

*The annual exclusion is indexed for inflation and increases when the increment exceeds \$1,000. It is not known when the exclusion will reach \$13,000.*

#### Irrevocable Trusts.

Irrevocable trusts can be both estate tax savings vehicles as well as vehicles to protect your beneficiaries. As estate tax savings vehicles, they can be

recipients of your annual exclusion gifts to children or other beneficiaries who might not be able to handle these gifts responsibly. As protection vehicles, their terms can instruct the trustee to provide funds from the trusts only for specified purposes, the child's health and education, but not for a spending spree. Irrevocable trusts can be set up and funded currently, while you are still alive, or they can be simply terms in your revocable trust that spring up after your death to protect your beneficiaries when you are no longer able to do so. "Control from the grave", if you wish.

#### Other estate planning alternatives.

Your situation may require more sophisticated or unusual estate planning techniques. The key to identifying those techniques that will maximize the success of your plan is to identify your specific issues. We can help by asking you the right questions to uncover what you want to accomplish, and then recommend a course of action.

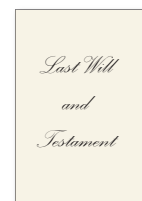
#### Review your documents.

On a regular basis, review your documents to be sure they still meet your needs. You should also review the documents with your legal advisor whenever there have been substantial tax law changes, financial changes, or changes within your family situation.

### ADDITIONAL NECESSARY DOCUMENTS

#### Pour Over Will.

While your revocable trust replaces a traditional will in that it provides the blueprint for transferring your wealth at your death, a somewhat briefer version of the will is still a necessary part of your estate plan. This goes back to the requirement that you need to re-register assets. Sometimes that task doesn't quite get completed prior to death. Or there may be assets that you simply did not want to transfer to trust or that you forgot about. A Pour Over Will simply states that any assets that are in your name alone will go through an abbreviated probate proceeding and will then "pour over" to the trust to be managed with other trust assets according to the terms of the trust. (Hence the term, "Pour Over" will.)



□ Durable Power of Attorney.

Like the Pour Over Will, The DPOA acts as an insurance policy against assets that you failed to transfer to your trust, but this document works while you are still alive. Suppose you drafted your revocable trust and soon thereafter became incapacitated — before you had transferred assets to your trust. The person you named as your DPOA would then have the authority to sign on your behalf and transfer your assets to your trust to be managed by your chosen trustee.

□ Health Care Power of Attorney and Living Will.

The DPOA generally covers financial transactions. You may also have a separate document (HCPA) to allow someone to consent to health treatment on your behalf.

□ The Living Will we all recognize as the “Terry Schiavo” document.

It is the direction you give to your loved ones as to whether or not to continue life support. It doesn't matter which you choose, but do make your family aware of your wishes. Because of its provocative nature, this document should be drafted separately from any other of your estate planning documents. Some states have a form document that can be accessed on-line and is recognized by hospitals and doctors as a valid document.

([www.members.mobar.org/pdfs/publications/public/dpa.pdf](http://www.members.mobar.org/pdfs/publications/public/dpa.pdf))

([www.idph.state.il.us/public/books/advin.htm](http://www.idph.state.il.us/public/books/advin.htm))

*ask*

To uncover your particular circumstances/challenges/needs...

*listen*

Attentively to develop an expansive understanding of your objectives and then...

*solve*

The challenges associated with meeting your goals by providing customized financial solutions and engaging teams of Commerce specialists skilled in all of the disciplines you need.

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