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THE PLANNER

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A monthly newsletter for Accounting, and Financial Professionals with a focusing on Estate Planning, Elder Law, and Special Needs Persons.

The Planner is a newsletter to inform and educate Accounting and Financial Professionals of the ever changing areas of estate taxes, and elder law to better service their clients.

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Practice Transition Plan

A large part of many financial service professionals' practices is helping clients with business succession planning. Yet only 29% of these professionals have created a formal practice transition plan for their own businesses. In this edition of The Planner, we will look at some of the steps involved in transition planning for a financial service practice, including when and how to get started, valuing the practice/business, and the timetable to consider.

This is a topic of particular interest and benefit to all financial advisors and other professionals who work with, and can assist in transition planning for, financial advisors. In addition, the general concepts presented here easily can be adapted to other estate planning professionals who need to consider their own practice/business transition planning.

What Is Practice/Business Transfer Planning?

Practice/business transfer planning for the financial advisor creates an orderly transition of the advisor's "book of business," clients and multidisciplinary relationships to an approved eligible buyer.

If the advisor's children are not interested in or are not the right choice to take over the business, it will be necessary to recruit and develop an individual with characteristics similar to the advisor to be the advisor's successor.

Much will depend on the contract the advisor has with the primary companies he/she deals through or represents. Is the advisor an independent? Is he/she a captive with outside privileges? Is he/she restricted to one carrier only? If that is the case, the selling and buying advisors' agreements with that carrier must all be aligned; usually, the carrier will want to approve the buyer and the selling process (but not the selling price.

Why this Planning Is Important

Often the advisor does not have a vision of "life after practice" or what might happen to his/her family, employees and clients should he/she become disabled and unable to work, retire or die suddenly. Advisors counsel clients on these issues nearly every day, but rarely take the time to think about the issues for themselves. Succession planning is just as important for the advisors as it is for clients.

Consider the clients with whom the advisor has developed close relationships over the years. Who would service them if/when something happens to their advisor? Will they have to call an 800 number and talk to someone who doesn't know them at all? Will they be "assigned" to someone they don't know? Ongoing continuous service leads to a continued relationship; LIMRA studies indicate clients buy financial products seven times during their lifetime, based on life cycles and style changes. These relationships are important not just to the existing advisor, but also to a younger advisor coming into the profession.

Also, the selling advisor has poured his/her life into building the practice, with an investment of blood, sweat and tears over many years. Many client and professional relationships have been developed during this time. Properly introducing and integrating the buying advisor into the practice can help to preserve these relationships and lead to a faster and more efficient professional career penetration for the buying advisor. The selling advisor should prepare marketing materials that the new person can use immediately to clearly identify the buying advisor as a part of the team.

Planning ahead for this transfer has advantages for all who are affected: the advisors, spouses and families, clients, staff, business associates, and the companies (carriers) with whom the advisor works. Everyone wins when planning for continued service to existing clients.

Planning Tip: According to a LIMRA advisor retirement study, advisors are getting older - the average U.S. life insurance agent's age is 52, while the average U.S. worker's age is 37. Fewer new advisors are coming into this profession, so the pool of potential buyers is shrinking. The time to start planning is now, even if the advisor doesn't plan to retire for several more years.

Finding a Match

It is critical that the buyer is someone whose personality works with the seller's and that they share the same values, beliefs, priorities, characteristics and focus. If there are no family members to recruit, prospective buyers often can be found through local meetings of professional groups. Engage in preliminary discussions with these prospects, not so much for the possibility of acquiring the business, but more of character and professional development. Evaluate candidates by getting to know both the potential buyer and his/her spouse. It can be very helpful for the selling advisor's spouse and/or another trusted advisor to assist with this part of the process and to have several meetings over time.

When the decision has been made to bring this potential buyer into the office, the advisor will need to prepare to mentor him/her according to the "whole person" concept. Not only may the new associate need to learn prospecting, sales techniques, how to set appointments and manage work time, but he/she may also need to learn how to balance work, family, church, learning the business and perhaps even learning an entirely new profession. Plus, this concept will give the advisor the best chance of deciding if the potential buyer is really the right choice.

The selling advisor should provide the new associate with an office, desk, phone and staff (at no charge) and let him/her listen in on conversations with other professionals. The new associate should be taken to professional meetings and given assistance to obtain the needed training and professional designations. Realistic production goals should be set along the way.

Communicate with clients via a letter of introduction of the new associate, letting them know that he/she is now on board and can assist them in the event something happens to the existing advisor. The new associate should be personally introduced to clients on reviews and appointments, explaining his/her role.

The selling advisor must have the correct mindset of give and take, and realize that the time it takes to mentor the new associate is an investment in the transition process. This relationship is a top priority.

Planning Tip: The buyout should not be mentioned too early. The selling advisor will want to take time to develop the new associate and make sure the buyout is right for both of them.

The Deal Structure

Conduct a practice valuation to make sure the selling price is fair to both the buyer and the seller. There are general rules of thumb for valuing different sorts of practices, but they are just that - general. Every business is unique and the owner is typically not objective in determining its value. That's why it is a good idea to get an objective opinion of value from a professional business valuator. The purchase price can then be negotiated from a position of knowledge, and terms and structure can be discussed and resolved.

Planning Tip: Consideration should be given to whether this is a practice transfer or a business transfer. A practice is defined as a sole producer driving all revenue. A business is defined as having multiple value drivers in the practice (associate producers, CPA alliances, product specialists) supporting revenue. If there is enough time (eight to ten years), consider adding value drivers now and build for the future.

Closing and Implementation

Once the deal has been structured, each side should do their due diligence. An attorney should prepare the purchase agreement. It should include a unilateral buy/sell agreement with its performance secured by life and disability insurance on the buying advisor and its value secured by life and disability insurance on the selling advisor. Once all agreement elements are in place, close the deal and begin to implement the process.

Planning Tip: Most banks will not finance this kind of sale because there is no guarantee that clients will stay, and the existing revenue stream could decrease. It is more likely that the seller will need to finance the sale, structure an installment note, and be prepared to get back in the business to protect the investment if that becomes necessary.

Planning Tip: It can be very helpful for the selling advisor to stay on for another year or so to ensure a smooth and successful transition.

Conclusion

While most estate planning professionals are quite familiar with helping their clients with succession planning, many do not have transition plans of their own. Much of this newsletter has been written from the financial advisor/agent perspective; however, the general concept can easily apply to other disciplines within the community of estate planning advisors.

The best time to start planning for a practice transfer is a minimum of five years before a potential transfer. Since none of us knows when we will die or become disabled, that means now. Start writing a plan. Define a planned transfer date. Time permitting, add value drivers for additional revenue now and for the future. Follow and modify the plan as needed. The financial risks of death or disability of the seller or buyer can be hedged by a buy/sell agreement funded with life and disability insurance. And finally, use the multidisciplinary approach (attorney, valuator, financial advisor, CPA) that we recommend for our own clients.

Beware the Remote or Contingent Beneficiary with Special Needs

You may not want to leave any of the money in your estate directly to a relative with special needs, but the fine print in your estate planning documents might cause a catastrophic distribution anyway.

As you probably already know, you should almost never leave an outright bequest of money or property to a person with special needs because the receipt of assets could compromise the individuals government benefits. If you want to leave funds in your estate for the benefit of a person with special needs, your special needs planner will help you to establish and fund a special needs trust that will hold your loved one's inheritance for her benefit, while insuring that her government benefits stay intact. However, in many cases you may not want to leave any money for a relative with special needs, but your previous estate plan (possibly drawn up by a lawyer who doesn't specialize in special needs planning) may have other ideas. Let's take a look at how this might work.

Joanne has three adult children, Sarah, Emily and Doug. Sarah has two children, Emily has three children, and Doug has one child, a son with special needs who lives on his own and receives Supplemental Security Income and Medicaid. Joanne loves her grandchildren dearly but would like to leave her entire estate to her three children, with funds passing to a grandchild only if one of her children dies. Joanne visits a non-special needs planner who draws up a will stating that all of Joanne's property shall pass "in equal shares to my children or, if a child is not living, then to his or her issue." This will seems to fulfill Joanne's wish and, at first glance, it doesn't appear to cause any problems for her grandchild with special needs because Doug is going to receive the inheritance, not his son.

But first glances can be deceiving. If Doug dies before Joanne and she doesn't change her will before her death, Doug's son with special needs will inherit his father's share of Joanne's estate, and that inheritance will wreak havoc on his Supplemental Security Income and Medicaid benefits. A properly drafted estate plan will not rely on generic language and will address Doug's son's special needs by either creating a special needs trust to hold his potential share of the estate (even though it's only a remote share) or by skipping Doug's son altogether, if Joanne believes that this is appropriate. Doug may have already created a special needs trust for his son, in which case it is likely that Joanne could direct Doug's share of her estate right into the trust in case he passes away before her.

The one thing that you should never do is pretend that this isn't going to happen to you. A good estate plan takes into account all possibilities, even those that seem remote. Keeping your fingers crossed and relying on a child to survive you and inherit your estate is not an effective estate planning strategy, despite the fact that the odds are in your favor. If you've prepared your estate plan with a non-special needs planner, there is a good chance that he or she might not have taken your relative with special needs into account when drafting the "remote or contingent beneficiary" provisions of your documents. Schedule a review with your special needs planner today to make sure that your remote or contingent beneficiaries will not lose out in the future because of poor drafting in the past.

Supreme Court's Decision on Health Insurance Law Has Implications for People with Disabilities

The U.S. Supreme Court recently heard three days of oral arguments in a series of cases challenging the constitutionality of the Patient Protection and Affordable Care Act, which was passed by a divided Congress in 2010. The Affordable Care Act, also known as Obamacare or the Universal Health Insurance law, guarantees affordable health insurance to almost all Americans, including people with pre-existing medical conditions and low-income people with disabilities who may not already qualify for Medicaid or Medicare. If the Supreme Court throws out all or part of the law, people with disabilities could lose some very important benefits.

The Affordable Care Act is a massively complicated law, but at its core the law provides health insurance to people who currently don't have it through several mechanisms.

The law prevents insurance companies from denying coverage based on pre-existing medical conditions.

Children up to the age of 26 are now allowed to remain on their parents' health insurance plans without substantial penalties.

The Medicaid program will be greatly expanded to provide coverage to low-income Americans who don't already receive care.

All three of these provisions affect people with disabilities, especially young people and those who have low but not super-low incomes, because under these provisions they will be able to access low-cost insurance that was not previously available. Finally, the law requires all citizens who do not qualify for government-sponsored health insurance to obtain private health insurance, which could be provided through work or purchased for an affordable price through insurance exchanges that are subsidized by the government. If a person does not obtain health insurance either through the government, employment or on her own, then she would incur a substantial tax penalty, usually the loss of her tax refund. This requirement is known as the "individual mandate."

A coalition of business groups, private citizens and state attorneys general challenged the Affordable Care Act in court, alleging that it exceeded the scope of Congress's powers. The Supreme Court heard three days of oral arguments on various aspects of the case. On the first day, the Court considered whether it was premature for it to hear the case at all, since taxpayers have not yet been penalized for failing to purchase insurance. (The requirement doesn't begin until 2014.) On the second day, the parties debated whether the government could require citizens to purchase private health insurance under the Commerce Clause of the Constitution. On the last day of arguments, the Court questioned the scope of the law's Medicaid expansion (essentially asking whether Congress can require states to expand access to Medicaid or lose all federal Medicaid funds) and it also sought to determine whether the entire law should be thrown out if the Court decides that the individual mandate is unconstitutional.

People with disabilities will be effected in different ways depending on the scope of the Court's ruling. If the Court throws out the individual mandate but keeps the rest of the law intact, as many observers are now predicting, then most of the provisions relating to people with disabilities will remain in effect. However, if the Court decides that the entire law cannot stand without the individual mandate, then people with disabilities will lose all of their benefits under the law, including the pre-existing condition rules and the ability to stay on a parent's health insurance plan until the age of 26. If the Court decides that portions of the law are constitutional but finds that the Medicaid expansion provisions are unconstitutional, then many people with disabilities who might be able to qualify for Medicaid under the expanded eligibility provisions will once again become ineligible for benefits.

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