National Association of Estate Planners & Councils
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Report

"The Future for Estate Planners"

Presented by:

THE FUTURES TASK FORCE

of

The National Association
of
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(NAEPC)

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The Association of Choice for Estate Planning Professionals

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FOREWORD

In January, 2011, Joe Falanga, CPA, President of the National Association of Estate Planners & Councils (NAEPC), began to consider the impact if Congress extended the $5,000,000 per taxpayer wealth transfer tax exclusion beyond 2012 and how that might change the nature of estate planning for practitioners who may find themselves doing something very different in the future. Joe also began to consider what the future make-up and direction of the member councils of NAEPC might be. Accordingly, with the approval of the Executive Committee I was asked to chair a Futures Task Force (FTF) with the intent of providing a sense of direction for our national organization and its more than 225 member councils.

I am proud to report that eight experienced, distinguished professionals were asked to serve on the FTF, and each readily agreed. A list of that group appears on the following page. NAEPC is extremely grateful to each of those caring and giving individuals for their contributions to this project.

Finally, after months of limited phone but extensive email exchanges, it remained my task to consolidate a large volume of input into a report/white paper that hopefully will be of value to its intended audience. I have decided to limit my editorial comments as much as possible and to weave the actual words of the task force members together whenever possible. It would be too awkward to attribute each statement to the originating panelist, so that will not be attempted.

NAEPC hopes the following will be of interest and of value to each reader.

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This report was created by the Futures Task Force as a service to our NAEPC affiliated councils, their individual members, and the estate planning community. Interested parties are welcome to publish and circulate this report in full or in part and are requested to attribute to the National Association of Estate Planners & Councils.

EXECUTIVE SUMMARY

First, despite the task force's efforts to examine issues from an estate tax neutral position - - - it is not material whether there is any tax at all or a $1,000,000 to $5,000,000 exclusion - - - the estate tax issue is still "the elephant in the room." Even though we endorse the position that estate planning is not <u>just</u> about taxes, the profession is clearly driven in significant measure by the Internal Revenue Code's estate and gift tax rules, whatever those may be in a given year or decade.

That said, the task force members seem inclined to reluctantly accept that the relative stability we enjoyed in the gift and estate tax laws through much of the 20th century may not again exist in the foreseeable future. We have become somewhat accustomed during the past eleven years to dealing with circumstances that exactly mirror the conditions set forth in the first paragraph above. No Congress in the past decade has given us any indication that a stable tax environment will be in place to allow us to help our clients plan their estates with any degree of long term certainty over tax-driven liquidity issues.

However, since there exists such uncertainty over taxes, we were unanimous in our opinions that each of our member disciplines needs to become even more focused on the many non-tax issues to be dealt with in designing and monitoring an effective estate plan for our clients. By not allowing the *costs* of dying to dominate our focus, we should become much more adept in assisting our clients first to *build and create*, then to *protect and continue to grow*, then to *distribute* (during life and at death) those estate assets, and finally to *continue to serve the next generations*/*beneficiaries* through the same processes!

Task force members have addressed the skills required to fulfill the above objectives in considerable detail in this report, so we shall not repeat that dialogue here, but we do think it important to summarize key points:

1. It is critical that we continue to populate "the estate planning profession" with individuals who are experienced, educated, and degreed and/or credentialed in their special fields of expertise. One should no longer be able to claim estate planning capabilities just because he/she can recite that "the first $5,000,000 is excluded from taxation; everything above is taxed at 35%," or whatever the law happens to be at the moment.

2. Asset protection considerations will continue to become more prominent in our estate planning efforts. Our generally litigious society, bad marriages and bad divorces, and beneficiaries incapable of financial management are all issues that will not go away regardless of tax laws.

3. We <u>all</u> need to focus more upon building relationships than upon conducting transactions.

4. Similarly, the continued aging of our society will place more emphasis upon elder law and other services for senior citizens - - - activities which fall squarely into the field of estate planning.

5. Because estate <u>creation</u> clearly falls within our realm, all advisors will be required to become even more knowledgeable about investments (both in qualified and non-qualified plans) and insurance (not only life, but high limit disability and long term care as well).

Finally, the NAEPC and its member councils should continue to provide both broad-based and practice specific education to the 27,000+ professionals who represent our total membership. While it is true that most of our members have the availability of excellent practice specific education within their individual professional organizations, no other association provides its members with such insight into and education about the issues critical to professionals in the <u>other</u> fields that comprise our membership. Such broad-based education will be even more important in the future as the team concept of financial planning becomes increasingly more accepted by those of us who do the planning and by the clients whom we serve.

As implied in the Foreword, this has been a difficult topic about which to apply guidance. If, however, each or any reader gleans any new insight at all into what the future may hold for those of us who practice estate planning, we on the task force will feel that the time and effort spent in constructing this report were well worth our commitment. Only time and events will tell us how close to the target we actually came. Stay tuned on that!

QUESTIONS EXAMINED BY TASK FORCE

Each question is discussed in greater detail on the following pages as indicated. The writings are those of task force members. Those thoughts gave rise to the Executive Summary, which should be seen as the conclusions of this task force.

DISCUSSION OF QUESTION 1
How do you see the future of estate planning as we know it today?

- It truly is only the ultra high net worth individual who will seek out planning methods driven by tax reduction. While I can't say I wholeheartedly agree that the exemption will not decrease---especially if people wake up and recognize what dire straits we as a country are in---my concern lies more in the other direction: that of estate tax repeal entirely. If we have a one-term President and Congress is controlled entirely by the right side of the aisles, I hold no hope out whatsoever for a survival of the federal estate tax. From that point on, it will be totally up to each state, and I'm certain those not constrained by constitutional prohibition against an estate tax separate from a federal estate tax will embrace the vacuum left by repeal at the federal level. In that regard, there will be far greater need for estate tax planning, because no state will start taxing at $5Million, it will be far, far less (NJ today is only $675K).

- As a fundamental matter, 2011 law significantly increases the amount of property a taxpayer can give away tax-free during lifetime or leave tax-free at death. That's all it does. It doesn't repeal death or loss of capacity or the personal and financial stresses and anxieties associated with either. In short, it does not repeal or even suspend temporarily the need for a clear, thoughtfully designed plan that provides first a structure for living dependently in case of loss of capacity and then a structure that provides appropriate protection and resources for that individual's survivors.

  The point is that the flip side of the opportunities created by the Act is the danger that taxpayers who have long been given the impression that estate planning means estate tax planning, might now think that if their estates are under $5 million (or $10 million for couples), they won't have to bother with and incur the expense of "estate planning." They won't have to heed their advisor's advice to bring a decade-old set of documents current or get a complete plan done in the first place. Unfortunately, the cost of that misimpression could be, well, incalculable.

  Therefore, we urge taxpayers who have not done their planning to do so. The notion that there will be no estate tax on what could eventually pass to the children is likely to be of little solace to a surviving spouse who is left with a lot of ambiguity and little structure for management of what could be considerable sums otherwise "left" to him or her.

- A practice is generally 20% financial strategy and 50% coaching families, as the focus has been on the provider of the wealth to the detriment of 2^{nd} and 3^{rd} generation family members that may need additional support and guidance.

- It is my view that any slackening in demand is by no means attributable to just the $5 million exemption. It's also attributable to economic and political uncertainty and most basically, to a fear of outliving money, even a lot of money. In other words, concern about estate taxes pales to concern about living long lives at low yields!

I also believe that a sizeable segment of the current generation of estate planners, broadly defined, honed their marketing skills, their disturbing tracks and their value propositions on the basis of estate tax reduction or estate tax liquidity. For many, these sales themes aren't resonating right now, the disturbing tracks aren't disturbing and the value propositions are not of particular interest to a wide swath of prospects. The bottom line is that the estate tax (and associated liquidity) business is under pressure and the estate planning community, broadly defined, is ill-prepared strategically and emotionally to acknowledge what's happening and effectively deal with that pressure.

- The various disciplines appear to be invading the territory of one another and have become overly cross-pollinated; the trend is to consume potential clients rather than work together as a team. I also am seeing clients focus charitably using life insurance.

- My sense is that it might be helpful for us to create a framework for planners to take a collective step back, take off the filters, and think about what <u>is</u> resonating with those who are no longer concerned about estate tax reduction and liquidity, what products and services they <u>are</u> likely to find appealing, and what kind of value proposition they <u>will</u> regard as meaningful. The response to this exercise will obviously vary from planner to planner. Some will no doubt conclude that their business model is intact and everything is just fine. Some will conclude that their business model is essentially intact but they probably ought to re-craft their message for greater receptivity in the marketplace. But others may well come to a more uncomfortable conclusion that their business model, product mix or whatever has "jumped the shark." My point is that I believe that the best that we as a group can do is to help our colleagues construct the framework to make that assessment.

- I see two different types of people---those high level planners who are concerned and spend a great deal of time planning, not solely for tax purposes, and those who believe taxes won't go away.

- There is a clear and present danger to the estate planning profession as a whole and retaining business as the world changes is very important.

DISCUSSION OF QUESTION 2:
What changes do you plan to make in your practice in the next one to three years?

- Over the next 1-3 years, we will devote more of our firm's marketing resources to alerting the public and other professionals of our expertise in the elder law and special needs planning fields. We will do this by writing and publishing articles in consumer and professional publications. We will also speak at local and national conferences in an attempt to highlight the fact that estate planning is more than tax planning.

- I am gearing up for more activity in the area of life insurance policy management for both COLI and individual policies. I believe that, for several reasons, there is going to be both a heightened interest among policyholders in surrendering policies and a new push by agents for replacements, again in both COLI and individual settings. Therefore, I believe there will be a corresponding need for independent advice on the options available to policyholders that will range from treasure to tweak to toss.

  With respect to estate planning, my sense is that interest in estate tax planning (and the associated purchase of life insurance) will continue a trend towards being the province of the very rich, though I think many in that demographic will be interested in the prior sub-topic, i.e., surrendering or modifying their policies. Beyond the life insurance aspects of the discussion, I think that economics, management retention and income tax planning will become more of a priority for an increasing number of business owners than the estate tax and liquidity planning for getting their businesses to the next generation. Therefore, I will adapt accordingly.

- For my part, I feel being possibly a little too much tax driven in my thinking. Going to a higher level with my clients and counseling as to how their success can make a positive impact on others who could benefit from their thoughtfulness and generosity will prove a greater impetus. Having the trust of clients and the shared belief that you are there to help them achieve their goals is a powerful bond that causes people to follow someone else's advice. Being in the role of "instant expert" when brought in by other advisors to help a client solve a problem, I have tended to identify the problem as one of asset preservation and optimizing wealth transfer. That is followed by a dialogue to determine how we can help a client pay as little of current assets to the government as possible. That assumes that is what the client cares most about. They care of course at some level, but given the reluctance to go forward in a timely fashion means that I haven't hit the planning nail on the head. Part of my problem is the relationship is not with me and the client but with the client and the other advisor who brought him/her to me. Trust is not instantly there and it takes time to develop. Discussing the process with the client in the beginning and discussing this relationship factor may help bridge the trust gap earlier in the process.

- I do not see my plans or my practice changing much in the next 1-3 years. For the next 12 months, we will continue to do what we have been doing for the last 12 months, explaining to clients why now <u>is the best time ever</u> to do estate and wealth transfer planning. If the current law (5m/35%, GST & estate tax law) continues past 2013, I do not see a significant change in my practice. I do believe it may be possible that more and more of my practice may trend toward business succession planning and exit planning. I have conversations weekly with private equity groups looking to acquire successful businesses where there is no family succession plan and where the founder desires that the company continue. A number of clients are faced with no family succession and circumstances that appear to indicate non-family management is the only prospective buyer. Many times this tends to be owner financed and I typically discourage this since joint ventures with PE providing the capital and management providing the operations can allow clients to exit without financial risk.

  I am also seeing a number of very wealthy clients looking for LTC policies that are not a "use it or lose it" solution. Policies that offer multiple benefits (life, LTC, cash accumulation) under one policy. Although they could easily afford the cost of LTC, they are looking for the peace of mind knowing they have a financial product in reserve.

  In general, I think we all need to listen to what our clients are telling us. I know I am as guilty of this as anyone, but we all tend to be too biased toward our solution and trying to make our solution fit rather than truly listening to what a client tells us.

DISCUSSION OF QUESTION 3:
What changes might you recommend to those who practice in disciplines other than your own?

- Trust Officer/Trust Companies
  The current model for many of the bigger trust companies/departments (especially those that are part of the largest financial institutions) is to gather funds under management. However, the turnover rate in Trust Officers is similar to the turnover rate of consumer loan officers in the 80s; every 6 months there is a new person assigned to the account. So many of my clients have an outright dread of using a commercial trust company or department for this exact reason. My clients want to know that the trustee knows something about the family, the history and the values of the grantors. They also want the trustee to know about the beneficiaries. (Before any trustee gets mad at me, remember Clark said we all had thick skins, but I also speak from personal experience.) Get to know the beneficiaries, the family history, and the family dynamics. Stop comparing your returns to the S&P 500, or small caps, or even emerging markets. My clients don't expect you to outperform these indexes but they do expect you to be pro-active in limiting losses.

- CPAs
  Too often we all focus on income tax savings because we feel the pain every year. CPAs can be, but generally are not, the most influential of the disciplines because they have the most frequent contact with clients. However, I think they take too passive of a role, waiting for the client to call and give direction. CPAs should be performing more financial modeling for clients on their cash flows and assets. CPAs should do more financial modeling in the future for insurance product costs and benefits.

- Life insurance agents might consider strengthening their networking and presentation skills, respectively, and honing their skills and widening their comfort zone with broader application of the full range of products across the full range of buyers' needs. In traditional financial planning parlance, I guess I am suggesting that agents might have to refocus some of their efforts from distribution to accumulation and conservation.

  With respect to the attorneys, I guess that any suggestions would depend on the nature of the client base and the natural market for new clients. An attorney who works with very rich clients and has a reasonably steady flow of new "high end" business might well have plenty to do in the given time frame. However, those attorneys who work with mere mortals who in recent past were "estate tax planning" clients, might want to do some of the same reassessment that I advise for the agents. In short, they might want to move their value proposition back on the birth-to-death (and taxes) time line to correspond with the deep concerns that many (even well-heeled) boomers have about <u>their</u> money, not their <u>kids</u>' money. One way to think about it is to take a variation on the theory of relativity, i.e., "If the work you're trying to sell me will primarily benefit my relatives and not me, forget it!" That said, I believe that attorneys who specialize in probate litigation are very well positioned for the future.

- CPA: Should focus more on income tax issues. Studies have shown that clients typically care much more about this than estate taxes. This is probably due to the fact that income taxes have an immediate effect while estate tax planning may take years for the benefits to be realized.

Trust officers: Should focus more on getting to know the trust beneficiaries so that proper and prudent distributions can be made. While I personally believe having a professional trustee is a good thing, most clients I know prefer a family member (not just for financial reasons). The feeling is that the trustee doesn't really know their family and thus is not in a position to carry out the Settlor's wishes for the benefit of the beneficiaries.

CLU/CFP: Should focus more on the real reasons why clients need insurance and sound financial planning, such as providing for family members and a secure retirement. The fact that people would purchase life insurance to pay estate taxes always seemed like a weird reason to me. People should buy insurance for the families and retirement. I actually think this is a good development which could come out of the $5M exemption: people focusing on the proper reasons to buy insurance.

- Response from a CLU to the above comment from an attorney: You state "*The fact that people would purchase life insurance to pay estate taxes always seemed like a weird reason to me.*" I would argue that life insurance is the perfect tool for estate taxes. I know the argument you would put forth is that a sale to a skip trust, a SCIN, or any number of other strategies will eliminate the need for life insurance. But that is only part of the story. With enough time and all of the assumptions coming true is the part of the story that was left out. With enough time and perfect assumptions holding true through a 20-year period or longer, you might be right. However, life insurance is the only tool that will provide the liquidity at the exact moment it is needed to pay the estate tax; it does so with a discounted cost and with premiums typically maxing out at 10-20 cents on the dollar realized. Is there a cost for life insurance, absolutely, but the cost is finite and the result is known day one. I could never perceive a circumstance where life insurance purchased for estate taxes be owned by the insured but would almost always recommend the insurance be owned by an irrevocable trust drafted by counsel.

- And finally, the attorney's rejoinder: I understand the economics of purchasing life insurance to pay estate taxes and that in many cases it turns out to be a home run (especially if the client cooperates and dies early). I am simply saying that transactions where the "tax tail wags the dog" never seemed right to me. How would our world look if Congress eliminated ILITs or made the receipt of insurance proceeds a taxable event from an income tax standpoint? (Boy, that was tough to write).

DISCUSSION OF QUESTION 4:
What advice would you give to a bold young practitioner who is considering a career in estate planning?

- The times, they are a changing. In many respects, those in the estate planning field have traditionally had a transactional-based practice. What I mean by that is that the EP professional was brought in to solve a particular problem for a client (usually related to tax avoidance or minimization). After the problem was "solved," the EP professional had very little, if any, contact with the client. In many instances, the EP professional was brought into the case by someone else who identified the issue and sought out professional help for the client. The only reasons for the client to get back in touch with the EP professional were to make changes to his/her estate plan due to changes in family circumstances or changes in the law. This approach by EP professionals required us to always be in the "hunt" for new clients since we received very little repeating business from existing clients. Going forward, this approach will not work. In today's world, clients expect more from their advisors. It is imperative that we move from a transactional-based practice to a relationship-based practice. We must strive to develop long-term relationships with our clients so that they turn to us when they have questions or concerns. To develop this level of trust, you must expand the relationship beyond taxes and, more importantly, beyond contacting the client only when it is time for a sale or more legal work. While transitioning to this approach will present many challenges to professionals who are used to doing things a certain way, I believe that, long-term, it will allow us all to have more fulfilling professional relationships with our clients.

- Unless the person in practice has the education and background to be credible in the field, it's pointless to go further. Therefore, to build a practice, I'd insist on credentials. I would also suggest taking courses in human psychology….not a degree, *per se*, but estate planning is fundamentally focused on getting people to articulate their goals and desires, and getting them to talk about things, like death, that they don't like to talk about. Greater knowledge of human nature and human psychology can help the professional accomplish that.

  Second, it takes a very sensitive individual to be able to pull thoughts and information out of people in a way that all remain comfortable. Knowing how to ask questions, knowing the questions to ask and being patient enough to listen to the answers is incredibly important when counseling individuals with respect to their estate planning.

  Third, knowing how to assimilate the goals and objectives of the individual into a cohesive discussion for confirmation and then an articulation of the associated issues, complications, problems and roadblocks then becomes a starting place for solutions. This too is where education comes in, because only knowledge of potential solutions can allow the professional to lead the individual to the "right" solution(s). I submit that the technicalities of the solution aren't the way to lead an individual to action; it is an articulation of the benefits of the action that will convince the individual to take action.

  The sale of an insurance product is not necessarily the only solution, despite the fact that it's the sale of insurance that creates the revenue for some professionals. These skills can also help the professional develop the individual's trust, which is crucial to getting a client to take action to benefit his/her family.

The concentration will be on the aspects of estate planning that DO NOT revolve solely on taxes and the effect of taxes on the bottom line. There are skills we develop in working with people which help guide our clients in directions that are essential for transferring wealth to succeeding generations. Before there were high estate taxes to contend with, the Rockefellers, Carnegies and others faced similar dilemmas on how to pass down their accumulated wealth to their heirs. They did not wish to remove the incentives to be innovative or to assist those that followed them in their own philanthropic endeavors. They sought to find formulas for being "fair" to those that came after them and in many cases looked to their fiscal and legal advisors to help them sort out the conflicting desires they held. Some of the advisors are the forefathers we look to in our present estate planning practices.

When the Estate tax took over as the primary motivation in Estate Planning, many of these goals were given "short shrift." Our practices developed into how best to save on taxes. To what vehicles could we legally look in order to reduce that dreaded burden?

Although the saving and reduction of Estate taxes will still be pushed by many, I believe that those who develop skills and techniques for working with the family as a unit and showing the wealthy client how best to arrange his/her estate so that their goals of

…Family cohesiveness
…Philanthropic goals and learning
…rewarding innovative ideas
…encouraging incentive thinking
…Family fairness,

are achieved will be the successful practitioners of the future. What I am saying is although many of us have practiced with these goals in mind, we will now have to work with clients that want us to be a part of their family circle. Perhaps this will require intense courses of study in psychology and communication studies. We will certainly need to become knowledgeable in succession planning (I know many already practice extensively in this area) as well as elder care (another area some are expert in).

- For me the bottom line is: Taxes are important, but the most important element of estate planning is in assisting our clients in how best to make them comfortable in parceling out their wealth, so that at least in their own mind, it provides the most benefit to their future generations.

- You can't plan a career that has anything to do with taxes for a period of time longer than it takes Congress to change the law!

DISCUSSION OF QUESTION 5:
How do you think the membership of estate planning councils will/should look during the next few years?

- NAEPC must identify areas of estate planning/alternative practice areas that have not gotten proper or appropriate attention while allowing clients to re-focus on what is really important to them.

- Having been on the board of our local council the past three years, I've seen requests for membership from outside the traditional categories. Some time ago, we added an "…..and Allied Professions" to capture members who seemed to want to join for legitimate reasons (continuing ed., networking, willingness to do committee work) as opposed to what we considered "non-legitimate" reasons---seeing the current members as fair game for solicitation.

  These areas have included the following:
  -Valuation specialists
  -Securities brokers who actively work in the estate planning market
  -Senior Care advisors (provide assistance to HNW for money/bill payment management)

  I think a differentiation to consider in the future is whether the "category" focuses on those who get paid for giving advice and those who sell a product. It isn't that those are mutually exclusive, but as other businesses pop up who claim to be aligned with "estate planning," it may be a helpful distinction to analyze whether the category is legitimately connected to the mission of our organizations.

- It's hard to "break away" from the old and reliable group that we "cater to". By the same token they have other constituencies that are vying for their attention (and support). So trying to think "out of the box" who else might be a group or groups that could enhance the NAEPC? One possibility is to recruit those in Family Offices and Family Partnerships that are responsible for the estate planning in their office or group. It is a growing immeasurable number at this time, but someone can probably research how best to engage them. I would guess there are a few that are already members of the NAEPC.

  Moving a bit further into what I will refer to as "Industry." An interesting possibility are the HR people in large corporations who have had prior training in taxes and estate planning. Executive driven financial planning includes estate planning and the HR people are the group that encourages the corporate officers to engage in this planning---maybe crazy---but you never know. Finally, how about reaching out to the academics who teach taxation and estate planning? Perhaps there are a group of these Professors who could contribute their knowledge and expertise to our organization.

- There will still be coordinated planning that includes the 4 primary specialties (legal, accounting, trust and insurance) but we will see increased influence by planned giving officers (particularly those from community foundations with the option for perpetual DAFs), reputable business appraisers, investment managers, and family office (multi and single) personnel. I also believe there is an ever increasing need for asset protection planning, not necessarily the off-shore variety, but planning that takes into consideration the inevitable events (divorces, personal injury, wrongful death, litigation, bankruptcy, etc.,) that the heirs will likely face given enough time.

- The fee vs. commission argument has been ongoing, but the two are not necessarily mutually exclusive. My candid take is that fee-based and commission-based members of our councils can each be motivated to join and participate because they want to share with other professionals (which is in my opinion the foremost reason our councils exist) and serve that organization, or in some cases it may even be a combination of the two. The “networking” (I really don’t like that term!) concept is not inherently bad so long as it is accompanied by the give back of active participation and service. You mention valuation specialists, securities brokers, and senior care specialists as examples. Not to seem elitist, but most of our councils have credential requirements for membership---primarily law degrees; CPA certification; CLU, ChFC and/or CFP designations; CTFA--- so should those engaged in valuation, securities, senior care, and perhaps some others be admitted to membership without one of the above, or equivalent, credentials? I guess my question centers around at what level of professionalism do we suggest our councils hover?