Should Cinderella's Parents Have Had a Trust?

Life Is Not a Fairy Tale: 21st Century Estate Planning

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Foreword

I spent the first part of my career as a full-time life insurance agent. I remember attending a program at which a noted senior agent—decades later I still remember his name: Norm Levine—spoke about the responsibility that all of us have to take care of our families, whether we live or die.

It takes a lot of money to fund for the caring of widows and the raising of children, and Norm stated that there were two ways to arrange societies to accomplish that task. The first was to socialize the risk through government, as was done in the former Soviet Union and other command-control economies. The alternative was to take care of the risk ourselves. Since few people could accumulate the assets necessary to do so, and even if they did it may have been undesirable to tie those assets up to fund a contingency that may or may not have occurred until many years in the future, in Norm's view the best way to do that was to shift the risk to another. In a highly advanced, capitalistic society, the most efficient way to shift that risk was by acquiring a life insurance policy. Life insurance companies are in the business of accepting that risk—and for a small portion of the total assets involved all of us could meet our obligations to our families through the payment of a small, affordable sum from our income or assets. That small sum is known as a premium.

It seems like so long ago that I learned that concept. At the time the Soviet Union was still the major threat to the free world, but the lesson is as valid today as it was then. The passage of time has not lessened or changed the message. We must assume the risk for the future care of our families, and be fortunate that in the highly advanced, capitalistic society in which we live we have options that allow us to do so.

In other words, ***Insurance is Freedom***. That is what motivates me: freedom. Liberty is at the core of the foundation of the United States, and I believe that no greater society has ever been created on earth because it has provided that liberty to countless millions, the results of which have been nothing short of spectacular. One institution integral to this freedom and liberty is the insurance industry. It is why I still function as an insurance agent to this day.

The same freedom for survivors that is provided by life insurance proceeds is provided by a legal structure wherein people can order their affairs in such a way as to take individual responsibility for them. Just as there are two models for organizing society in order to take care of those in need, there are two ways for people's property to be distributed at death: people will either have taken action to designate who will administer their post-death affairs or they won't—and, if they don't, the responsibility for overseeing the administration of their estates, for determining how their property will be distributed, will go to the state. ***Insurance is freedom—and so is an Estate Plan.***

While I make these points by discussing insurance first and the rule of law second, that is due to my chronological experiences in life: I was an insurance agent first, and then I became an attorney. In fact, from the standpoint of organizing societies based on models, for free societies the rule of law comes first and insurance follows. As it pertains to estate planning, the law creates the structure and provides for the distribution of people's estates according to their wishes. Once that framework is in place funding can be provided to make sure that there is money available to implement the plan, to make it come true. Whether that money should come from life insurance or other sources of private wealth is a decision for people to make, and they can make that decision after having arranged their affairs by using the legal structure and instruments which comprise their own Estate Plans.

Fortunately, as noted in Chapter 2, recent estate tax law changes, first instituted at the end of 2010, now provide for up to $5.45 million per person to be free of federal estate taxation. Estate taxes require tax to be paid on assets left by a decedent before those assets can be transferred to heirs. While each state may impose its own estate tax laws, and people should be cognizant of their own state's rules, the $5.45 million per person federal exclusion serves to eliminate the estate tax for about 99% of the population. It is estimated that less than 1% of the population has assets exceeding that $5.45 million figure. Therefore, for the vast majority of the population, federal estate taxation is no longer a consideration. This book is intended for the 99% of people who won't have federal estate tax considerations. For the 1% who are fortunate enough to have assets exceeding $5.45 million per person, this book may still be valuable, but considering additional estate tax planning techniques is advisable.

It has taken me a lifetime of study to appreciate and learn the techniques associated with effective estate planning. My ability to share them with you, the reader, as well as my past and future legal and insurance clients, in a straightforward and non-legalese manner so that you, too, can function within the rule of law and provide dignity for yourself and your loved ones, is my objective in writing this book.

Note: for clarity, this book capitalizes several words relating to specific legal documents that are normally not capitalized in order to emphasize their importance in the narrative: [i.e. "Will," "Trust," "Trustee," "Special Needs," "Probate," "Estate Plan".] Also, the word "heirs," which technically refers to beneficiaries of those people dying without a will, is used here to describe all beneficiaries.

This book is dedicated to

My wife, Linda, and my daughter, Sabrina—my beneficiaries!

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Chapter 2

Why Have an Estate Plan?

The reasons to have an Estate Plan
range from personal to psychological to financial.

Why Have an Estate Plan?

When making decisions one of the most important questions that we can ask ourselves, if not the most important question, is "Why?" Asking "Why?" allows us to focus on the intended result first—and then work backward to see if what we're seeking to do justifies the time and energy we will put into our efforts, let alone whether we really want the outcome that we at first thought that we did.

So, ask yourself, "Why should I have an Estate Plan?"

Personal Reasons: Morality

Morality deals with what is right and what is wrong. It has become less fashionable to speak in terms of morality but I believe that issues of morality should factor into all of our decision-making—and that it is a moral responsibility to have an Estate Plan. If you don't have one, your loved ones will have to incur considerable time and expense, and perhaps conflict, to decide after your death how you intended your estate to be distributed. Isn't it moral for you to assume and make decisions pertaining to yourself and your property during your lifetime, and not force that decision-making on your loved ones after you are gone?

Moreover, modern Estate Plans go further than dealing with issues of death and the post-death distribution of our property: they put in place provisions for us to designate others to serve as our agents—to manage our affairs and make medical decisions for us—during our lifetimes. We can influence and/or control our destinies.

❖ Psychological Reasons: You May Feel Better

Many people who don't have Estate Plans carry the burden of knowing that they should establish them. Nonetheless, they don't do so. This often causes a nagging concern in people, one that is either just below or above the surface, but one that is in existence. Having an Estate Plan can allow you to:

- Feel secure that you have done everything that you legally can do to provide for yourself and your family. Take a trip or vacation without worry!
- Protect yourself should you get sick or hurt
- Protect your family should you die
- Provide this protection by making your own rules, within the parameters and framework established by your state government
- Make sure that your beliefs and decisions are honored

Once you establish an Estate Plan, won't you feel better?

Financial Reasons: Estate and Inheritance Taxes, Probate and Bond, Financial Management, Focus For an Organized Life

Estate and Inheritance Taxes—and Portability

The federal government, along with some states, levies taxes on the wealth that people accumulate over their lifetimes. For many, wealth is what remains after they have paid income taxes on their earnings and capital gains. Estate taxes tax that accumulation.

Also, to avoid situations where people give away their assets just prior to their deaths in order to escape estate taxes, gift taxes were enacted. Gift taxation coordinates with estate taxation, and wealth transfer during lifetime is part of estate planning.

A small number of states tax the recipients of inheritances, most exempting surviving spouses. These recipients are subject to inheritance taxes.

After federal government estate and gift tax changes that were enacted in late 2010, most of the population (approximately 99%) is no longer subject to federal estate tax. As of this writing in 2016, singles with more than $5.45 million in assets, and couples with more than $10.69 million in assets, must still confront estate taxation on amounts over those thresholds. The $10.69 million exclusion from estate taxes is not automatic. A concept new to estate planning, that of "Portability," has arisen so that married couples can take advantage of the full $10.69 million exclusion amount, but Portability requires procedures to be met in order for couples to avail themselves of the full $10.69 million exclusion amount.

Even for those couples that do not have $5.45 million per person in assets, taking advantage of the Portability procedures may be advisable because it will cement the possibility that $10.69 million per couple can ultimately be excluded from estate taxation. For example, a couple may have $6 million in total assets, or $3 million per person. The way that Portability works, the first spouse to die would not have his/her assets subject to estate taxation because $3 million is less than $5.45 million. There would be $2.45 million of the estate tax exclusion that would be unused. ($5.45 million less $3 million = $2.45 million.) But under Portability, the unused $2.45 million would be carried over to the surviving spouse, who can then add that figure to his/her separate $5.45 million exclusion. That would allow for the surviving spouse's exclusion to be $7.86 million. ($2.45 million carryover + $5.45 million surviving spouse exclusion (which may even increase due to indexing for inflation) = $7.90 million.) A couple whose assets at the death of the first of them to die are less than $10.69 million may ultimately be able to shelter $10.69 million from estate taxation over their joint lifetimes.

When engaging in estate planning, federal and state estate taxes, and state inheritance taxes – are factors to be considered.

Probate—and the Cost of Bond

Title is the manner in which ownership to property is held. Probate is the court process that allows for a decedent's title to property to be transferred. If you desired to gift or sell your property to another during your lifetime, you could sign documents transferring ownership of your property to another. But, if you are not alive to do so, a court must step in and authorize those transfers—providing for the legal transfer of assets and the finality of debts by making sure that creditors are paid and cannot come back in the future to assert additional claims. This process is known as Probate, overseen by the Probate Court. Probate fees are set by state law—and can be expensive, often to the surprise and amazement of heirs.

When property is to pass subject to a decedent's Will, or when a decedent dies without leaving a Will, the Probate Court oversees the administration of the estate. A Will may name an Executor or Personal Representative to handle the estate's affairs, but in cases where the Will doesn't specify that bond will be not be required (i.e., bond is waived), and in circumstances where no Will was left at all, the Probate Court will require that a bond be posted, in order to guarantee that the estate's funds will be there for the beneficiaries. The cost of a bond can be quite expensive, sometimes as much if not more costly than the Probate process itself.

A Complete Estate Plan can eliminate both the cost of Probate and bond.

Financial Management

What happens if you get sick or hurt and can't manage your own affairs during your lifetime? It happens often, and unless there's another person appointed to be your agent financial issues may not be attended to—perhaps to your significant detriment. A Trust and a Durable Power of Attorney can provide for the care of your financial matters during your lifetimes.

Tax Planning—and Unintended Consequences

Taxes impact so much of our decision-making that almost any type of financial decision requires tax planning. There are multiple systems of taxation, including but not limited to income, estate and gift and corporate systems of taxation. Absent adequate tax planning there is the possibility that unintended tax consequences could arise, with the further possibility that substantial, unplanned-for costs, in the form of unexpected taxes, could arise.

Modernly, it's fair to say that we no longer engage solely in Estate Planning: it's estate tax planning that's appropriate. The same holds in other respects: we no longer can engage solely in business planning, but business ***tax*** planning, or financial planning instead of financial ***tax*** planning.

Focus—for Organization

Estate Planning entails and overlaps with many other different subject matters. Preparing an Estate Plan helps focus attention on many different aspects of life. By focusing that attention on other, related areas, you will become more organized during your own lifetime—perhaps taking steps that you would otherwise not have taken. For example, you may decide to acquire or rearrange your insurance program or take legal steps relating to asset protection that you wouldn't otherwise even have considered.