# Estate Planning Checklist for Financial Advisors

Advisors understand the importance of a well-maintained estate plan. Because you meet with your clients at regular intervals throughout the year, you often can spot planning opportunities early. The following is a short list of questions you might find helpful to review with clients.

☐ **When was the last time the estate plan was reviewed?**

If more than 5 years, it might be time to review.

☐ **Was the plan prepared in Connecticut?**

It's not that out of state documents will not be valid – it's that they convey NO CONNECTICUT FIDUCIARY POWER. Out of state documents should be amended or updated to reflect the state of residence.

☐ **Are assets located in more than one state?**

If going through probate is a bad idea – imagine repeating the process in every state where real property is located. Multiple pieces of real estate in different states suggests trust planning may be appropriate. Additionally, there may be ancillary tax liability to consider.

☐ **Do estate taxes matter?**

<u>We still have an estate tax here in Connecticut</u>. Many clients are reading national publications that describe traditional A/B tax planning as unnecessary. But here in Connecticut, if a married couple's combined wealth (including everything) exceeds 2 million dollars, tax planning is still appropriate.

☐ **Does the current plan provide flexibility for shifting basis for income tax purpose? Does the plan consider income tax at all?**

Estate tax is not the only liability to consider. The Connecticut estate tax starts at 7% but capital gains tax starts at 15%. Gifting assets during lifetime might be advantageous for some purposes, but careful consideration should be given to the need for income tax and basis adjustment strategies.

☐ **Have lifetime gifts been made?**

Documenting lifetime gifts after death can be problematic. Tracking down the tax basis of a gift van be virtually impossible. A "healthy" estate plan should include a record of all lifetime gifts over the annual exemption amount.

☐ **Are there any reasons to consider divorce and/or creditor protection for children or grandchildren?**

Trusts that distribute assets when a beneficiary reaches a certain age (e.g., 25) may have creditor protection until that point; but that protection disappears as soon as the beneficiary reaches the designated age. If additional protection from divorcing spouses, or business liabilities is desired, the plan should be re-examined.

☐ **Are retirement assets being addressed?**

Many clients have heard or read that "retirement accounts should NEVER be directed to a trust." This is not correct. But retirement accounts require careful planning. For example, once the original owner dies, retirement assets are not "special" in the eyes of a creditor, and retirement assets can be accessed to re-pay debt or settle a divorce, depending upon state law. But retirement assets can be insulated by trust, provided the trust contains specific provisions authorized by Treasury Regulations. Likewise, when retirement accounts are substantial, they may create estate tax exposure for the spouse that is the second to die. This exposure can sometimes be mitigated by insulating the retirement account in trust, so long as the trust contains specific language.

☐ **Is the current plan "not to plan"?**

Just title everything jointly. The "do it yourself" estate plan can be effective to avoid probate, but there may be tax consequences to adding additional owners. (An account that is joint between husband and wife is deemed 50% includable in a taxable estate. But if a third party is added to the account (such as a child) the automatic 50% marital deduction disappears and the origin of the funds contributed to the account must be traced back to the original owner).

More importantly, joint ownership and/or "transfer on death" instructions do not avoid circumvent the requirement that an estate tax return be filed and probate fees paid. Probate fees are owed regardless of whether a single asset goes through probate. Making sure that clients understand this and obtain appropriate professional advice regarding the requirements of this return is critical. It is much harder to complete an overdue estate tax return years later than to have one prepared within six months of a death as required.

☐ **Has the client obtained advice appropriate to his/her planning needs?**

Some clients will opt for the "do it yourself" approach and prepare their documents online. This may be fine, so long as there are no other tax, or beneficiary related issues to consider. Likewise, there is a big difference between a general practice firm that provides simple wills or powers of attorney and firms that focus on estate planning and estate administration full time. This will be readily apparent by how much time is spent with your client throughout the process. Documents are just pieces of paper. Understanding how a plan should work and then making it work is something else. Not everyone needs a sophisticated estate plan; but when they do, the experience of the legal advisor matters.

- [ ] **Does the attorney or firm actually administer estates and trusts regularly? How many trusts do they manage as Trustees?**

Tackling the practical considerations of estate and trust administration day to day provides a wealth of practical experience that cannot be downloaded from the internet. When law firms dedicate staff and resources to administering estates and trusts, they are in a better position to give your clients practical advice based on real experience.