CHAPTER 1

The Heart of the Estate Plan

Redefining Priorities

Consider the case of Les Tupass. Les began his working career at the age of 22, working eight hours a day, five days a week, and will continue to work until he is at least 65. As a result, Les will spend at least 90,000 hours of his life generating income. However, simply satisfying the debt service on a mortgage, paying the bills, and putting his children through college is not enough for Les. He wants to amass funds during this phase of his life so that when he and his wife, Hope, reach their golden years, they will have created enough wealth to retire comfortably and enjoy the remainder of their lives together.

Assuming that Les is successful, when he and Hope reach the age of retirement a change in their economic strategy will occur. Their priorities will now shift from wealth accumulation to wealth preservation. Assets that were amassed during their wealth accumulation years must now be protected and put to work to secure their comfortable retirement. During the wealth preservation period, Les's priorities will be to look over their stocks and bonds and determine whether the level of risk in their investment portfolio should be modified; analyze their beneficiary designations for individual retirement accounts (IRAs), 401(k)s, pension plans, and profit-sharing plans; review insurance policies and insurance needs; and perhaps even sell their principal residence of 40 years and move to a new community—all to accomplish one goal: to provide security during their retirement years.

During this period, Les will spend at least 10 hours a week working on wealth preservation to ensure that he and Hope are financially secure until the end of their days. Thus, if we assume that Les lives until the age of 85 he will have spent 10,000 hours during this period working on preserving the wealth that he and Hope have accumulated during the first four decades of their lives together.

Thus, it is neither unreasonable nor unrealistic to expect that Les and Hope will spend a minimum of 100,000 hours during the wealth accumulation and wealth preservation periods working on making and keeping sufficient funds to take care of the financial needs of their family and to provide for a comfortable retirement during their golden years.

Too often, the effort stops there. Les and Hope have overlooked an integral part of the process—wealth transference. The failure to incorporate wealth transference into the wealth accumulation and wealth preservation disciplines can result in federal and state inheritance taxes reducing their accumulated wealth by more than half. In essence, Les and Hope will have inadequately provided for their loved ones, creating onerous estate tax liabilities as well as causing unnecessary delays and costs that can lead to family squabbles—or worse, litigation.

The irony is that in proportion to the wealth accumulation and wealth preservation phases—which, as illustrated, can easily soak up 100,000 hours of one's lifetime—the estate planning and business succession planning process, comprising the essentials of wealth transference, requires only a fraction of that time. In fact, if the Tupasses had dedicated only one-tenth of 1% of all the hours they had spent on wealth accumulation and wealth preservation on wealth transference, they could have provided not only for themselves, but also for their loved ones for generations to come. Like most people in their situation, Les and Hope would have been happy to have spent the time developing an estate and business succession plan if they had only known what an estate and business succession plan can do to preserve wealth for their heirs.

Perhaps the reason why the process of estate and business succession planning is so frequently overlooked is that most people are not aware of their options and are too busy accumulating wealth and preserving wealth to take the time to plan for transferring their wealth. What we hope to do in this book is to provide a guide for those individuals who are interested in finding out how they, with a minimum of effort, can accomplish this goal.

What Is Estate Planning?

Estate planning is the process by which you review and assess your asset base, assess the needs of your loved ones, and, with the assistance of a qualified estate planner, implement a plan for the purpose of passing on wealth. The goal of the estate plan is to pass wealth to your loved ones in a manner that encourages harmony, personal growth, and independence in the most tax-efficient manner. The estate plan should be tailored to the unique needs of your family and should be carried out by capable fiduciaries. The documents reflecting your wishes generally consist of a last will and testament or revocable trust, power of attorney, advance directive for health care, and—if appropriate—trusts, created either during your lifetime or through your will at death.

What Is Business Succession Planning?

Those of you who own an interest in a closely held business should strive to implement a business succession plan. A properly drafted business succession plan fosters both leadership and the orderly transfer of control of a family business from one generation to the next. It also minimizes the estate and gift tax consequences which can cripple the ongoing success of the business during the transfer period.

Once the need for a business succession plan has been assessed, it can be condensed into a buy-sell agreement that provides for the transfer of the business upon certain events such as death, disability, or retirement, or it can be structured into a planned giving program. A planned giving program incorporates the use of sophisticated estate planning techniques in order to leverage gifts to the next generation in the most tax-efficient manner.

Fact Gathering

Every individual's life is unique. Therefore, every individual's estate and/or business succession plan must be tailored to his or her individual needs. Once an individual has recognized the need for an estate and/or business succession plan and has preliminarily identified his or her goals, the next step, and one of the most important, is the fact-gathering process. The estate and business succession plan can be effective only if the planner understands and appreciates the family structure, the needs of the heirs, and the goals that the individual hopes to accomplish.

During the fact-gathering process, it is important to develop a rapport with the estate planner so that you can be comfortable discussing all aspects of your life, which at times can be painful and emotional. Opening up to your planner is crucial. Family conflicts, power struggles, and jealousies, if any, need to be discussed early on with the hope that the plan will not exacerbate these issues but rather address them in a way that can help promote family harmony.

Additionally, during the fact-gathering process, the planner must fully understand your wealth base, the needs of your spouse and children, and your relationship with extended family members. Often overlooked during the fact-gathering process is how the relationship with your extended family members can assist you in determining who will serve as your ultimate fiduciaries of the plan. The difference between an estate that is administered efficiently and one that is administered inefficiently may come down to the single issue of who was chosen as the executor, trustee, or guardian.

Recognizing that life is dynamic, this fact-gathering process is one that should be ongoing in nature. Should the facts and circumstances change, as they always do, it is incumbent upon you to contact your advisers so that the plan can be appropriately amended.

Designing and Implementing the Plan

Having identified the need for an estate and business succession plan and having gathered all of the relevant facts, it is time for the estate planner to contribute his or her expertise and design a plan that fits your needs and circumstances. The estate and gift tax rules and the estate and business succession structures being discussed by the planner are at times complicated. However, it is critical that you understand your own plan and feel comfortable asking the planner to explain every aspect of the plan. Therefore, communication with the planner is key.

Once you understand and appreciate the plan, it then must be implemented. Implementation is a comprehensive project that requires not only the execution of the estate planning and/or business succession documents, but also the coordination of all aspects of the plan. Coordination includes integrating beneficiary designations with both the retirement plan and the estate plan, opening trust accounts for trusts created during your lifetime, issuing Crummey letters, moving life insurance into irrevocable trusts, retitling assets properly, following through with the designed gifting program, filing gift tax returns, valuing business assets as required by a buy-sell agreement, updating corporate books and stock ledgers, and educating the successor management team as to their anticipated role in the process. While this list is by no means exhaustive, it is intended to demonstrate just how encompassing the implementation stage is. Therefore, it is imperative that you assemble a team of advisers, each of whom plays his or her own role in implementing the estate and/or business succession plan.

Once the plan has been implemented, maintaining the plan on an annual basis is crucial. One way to help assure the plan is properly maintained is to obtain a planning summary letter to be reviewed annually. It is most helpful when this planning summary letter includes the issues to be addressed on an ongoing basis and highlights the need to maintain the plan as well as to adapt it to one's ever-changing needs and circumstances.

The Team of Advisers

Frequently, individuals seek out a life insurance agent to buy life insurance, an accountant to prepare tax returns, a lawyer to prepare wills, a financial planner to help create wealth, and a banker for individual and corporate banking needs. The problem is that while individual advisers may have been retained, in many circumstances there is a failure of communication between the respective disciplines regarding the implementation of effective estate and business succession planning. In order to best ensure that your estate and business succession plan is properly implemented, you must have all of your advisers working together, acknowledging and appreciating each other's roles, and assuming a certain degree of responsibility to assure the successful implementation of the plan.

In this regard, the insurance agent must assess the changing life insurance needs for you and your family, advise you as to the existing insurance portfolio's performance, make sure that the insurance policy or policies are properly titled, and be certain that the life insurance, either already in place or to be purchased, is the right product for your needs. The accountant must assist in all phases of the planning process, prepare all relevant tax returns, and deal with all financial, tax, and valuation issues. The financial planner must ensure that the assets are properly allocated and the accounts properly titled. In addition, the financial planner must work closely with the accountant to determine which assets are best suited for gifting purposes (taking into consideration all tax issues).

The estate planning attorney must structure the plan, prepare the necessary documents, and coordinate all the other professional advisers to ensure that the plan is put in place. In addition, the attorney must review the documents on a periodic basis to ensure that they conform with any change in circumstances (including changes in the law, as well as changes in the individual's particular situation). Finally, your relationship with your banker will prove helpful in determining whether a corporate fiduciary appointment is appropriate. The banker may also assist in reviewing ownership of assets under management and the status of funding and borrowing needs.

It is this coordination of experts as a team that will create the optimal result when planning your estate. Ideally, the professionals should meet, gather the facts, agree on the implementation of the estate and/or business succession plan, divide responsibilities, and see the plan through to fruition and periodic review.

Capturing the Heart of the Plan

Every person has his or her own concerns and heartaches, as well as goals and aspirations. It is the human elements of love and fear, as well as hope and joy, that shape the estate plan. Thus, when Les and Hope Tupass, working with their team of advisers, come to recognize that wealth transference is as important as wealth accumulation and wealth preservation, then Les Tupass will have more to pass and Hope will spring eternal.