

Efficient Estate Planning

The compelling reason to create an estate plan is to enable fiduciaries to use your property to benefit the people of your choosing while protecting the property; however, an estate plan should also be focused on efficiency. Many estate plans are drafted to be estate, gift and generation skipping transfer tax efficient and good practitioners draft estate plans that are income tax efficient too.

Property Transfers During Life

Estate plans should also be efficient in terms of limiting the extent to which probate is necessary. Eliminating or minimizing an estate administration in terms of time and complexity will save substantial legal fees. A central goal in creating an estate plan should be to “set the table” so that the estate administration can be done quickly and simply. Even if probate is avoided or minimized, there are many steps to the proper administration of an estate including the preparation of estate tax returns and income tax returns, but, if most of the property has already been transferred to trust prior to death, the property does not have to go through the probate process to get into the trust.

Transferring property during life is easier than at death. During life, you can simply write a check to transfer cash, sign a letter of authorization to transfer securities or execute a deed to transfer real estate. After death, the property must be reported to the probate court and, only after an executor has been appointed (which can take months), can property be transferred. Then, after the property has finally been transferred, the executor must account to the probate court for every penny received, earned, spent and distributed while in his/her possession.

A well organized estate plan should result in the administration being completed in about a year. (Note that for creditor rights reasons, you need to keep an estate open for a year in Massachusetts). A poorly organized estate plan or the absence of an estate plan often results in an estate administration that lasts years because much more time is required to marshal the property of the estate and then transfer the property. The longer the administration of an estate, the more the attorney fees are likely to be.

Grant Fiduciaries Broad Authority

Within your estate planning documents, a simple means to provide efficiency is to grant to your fiduciaries, executor and trustees, broad rights to perform many acts with respect to property without prior court approval. Alternatively, an attorney has to go to court to obtain permission for the fiduciary and the costs increase considerably. (As I always tell my clients, if you hear attorney and court in the same sentence, it is going to be expensive).

One might suggest that fiduciaries should not be granted too much authority as it may increase the likelihood that they will abuse it. I disagree with this argument for two reasons. First, if a fiduciary is going to abuse his/her authority for personal gain, the failure to authorize an act in a document is not going to be a deterrent. Second, you

should select your fiduciaries. Select people you know and trust or, at least, grant the right to select the fiduciaries to those that you know and trust.

Be Organized

You should also make sure that the process of estate planning is efficient. I send prospective clients an estate planning checklist that requires everything from names and addresses to financial information to dispositive objectives. A client does not need to watch me write down this information at our meeting at a cost of \$350 an hour. The completion of the checklist requires a client to organize all of this information. Additionally, it provides me with one complete document from which to work which decreases the likelihood of an omission, but mostly, it saves time and time is money when meeting with an attorney.

Thus, before your initial meeting, have a good understanding of what you have and what your objectives are. Do not try to tell your attorney what you need. Let him/her make that decision based on your explanation of your circumstances. It is more efficient if you go in with an open mind as to the solution and listen to the experienced practitioner. However, I do recommend that you become educated as to the terminology used in estate planning. To assist with this education, I also send prospective clients a booklet defining and describing various estate planning concepts and techniques.

The need for organization goes beyond the estate planning process. After your documents have been executed, make sure that the appropriate people know where to find your copies of your documents and how to contact your attorney. Introduce your attorney to your family if you can. Also, make sure that your fiduciaries know where to obtain your financial information (and computer passwords if that is where critical information is located). Keep clean records of your current property holdings and tax returns. Having this information readily available to your fiduciaries will save time and aggravation.

Efficiency in estate planning goes far beyond the terms of your estate planning documents. It requires implementation and maintenance. With good follow through, your estate plan can operate efficiently and your family can enjoy more of what you have worked so hard to accumulate (and the lawyers will get less).

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