February 13, 2017

Re: An Introduction to Core Estate Planning

This is a promotional memo I include on my website to help readers begin to think about an efficient, understandable, approach to core estate planning. It includes key points for you to consider. I also discuss what you can expect with this “core” planning.

I start off with these two points:

(1) My experience in dealing with trust / estate planning and litigation, combined with my being a tax lawyer, give me the ability to implement estate planning that is tax-effective with flexible built-in tax-savings options. This planning also includes defensive asset protection / litigation features to help avoid the numerous disputes and issues that have crossed my desk over the years. I worked 20+ years previously with a large Atlanta law firm and prior to law school was an IRS Agent in the Internal Revenue Service Atlanta large-case examination division; and

(2) I typically charge an all-inclusive flat-fee for this core estate planning work.

Effective estate, gift, and income tax planning is essentially second nature to me. I can readily address key tax issues as part of estate planning.

As to my additional emphasis on asset protection / litigation aspects of estate planning, old-age borderline dementia and the risk of our children losing their inheritance in a bitter divorce are universal threats
for most clients. Other uninsured risks spotlighting a need for asset-protection planning are: old-age incapacity, predatory elderly remarriages, automobile accidents, nursing home care, personal guarantees, and bankruptcy.

My goal also is to prepare documents that remain in place and effective for your lifetime, including within the documents adaptable provisions and options for future tax and non-tax changes in circumstances. This helps prevent the need later for multiple revisions or getting a court involved absent this adaptability.

(1) The Inevitability of Someone Stepping-In

We all hate the idea of someone else eventually stepping-in and taking over our affairs. But, having your planning in place well in advance of this situation is critically important.

The essential estate planning document I recommend most frequently for this inevitability is a "living trust". A living trust is a written document, essentially with instructions for the oversight of your property while you are alive in the event of your incapacity, and after your death for the benefit of whichever one of you is the surviving spouse, and ultimately for your children.

Initially, some clients feel the idea of this protective trust set-up is too complex. "Sounds too complicated" is typically the initial objection.

But, it is not too complex. Clients will find little difficulty with this trust set-up. It operates somewhat like an insurance policy.

Using a trust does three things. One. It lets you spell-out within the written terms of your living trust your preferences for the control and oversight of your property, particularly in the event of your incapacity or death. Two. A trust is the only option that enables an adaptive flexible response down-the-road to estate, gift and income tax savings opportunities. Three, a trust provides levels of asset protection for your property.
Whether or not you accept the idea of a trust, the baseline question is if, and when, someone will have to step-into your shoes due to your incapacity or death.

In answering the above question, you essentially must decide either (i) to invest the time and effort now to put your planning in place, or (ii) simply wait and let your situation play out later, possibly in a haphazard way. Haphazard events can arise under the concealed control of an overreaching caregiver, predatory new spouse, investment scammer, or when your situation – absent planning – requires a court to take over with its own decision-making power for your family.

By contrast, a trust gives you control over spelling-out your preferences, as well as choosing and naming the individuals who will step-in for you.

(2) **To Protect You and Your Spouse**

Surviving spouses often end up in the most vulnerable position, due, as I stated above, to overreaching caregivers, elderly second marriages, investment scams, undue pressure from others for financial gifts and handouts. The trust helps provide a safer, defined, and predictable set-up for the surviving spouse.

(3) **To Protect Your Children**

Assume a large amount of money drops directly into your children's laps. Right into their checking account. Will it be easy for them simply to start spending and buying more stuff? Will a son-in-law or daughter-in-law try and take control of spending and investing the funds? As a protective measure, your living trust set-up helps prevent this in-the-lap problem for your children.

After both your deaths (as parents), the written terms of your living trusts will carve-out separate sub-trusts for each of your children, with each child as trustee of his or her trust if you wish. This carve-out hopefully helps your children view their trust as
an isolated retirement source of funds, etc. Isolated also from the pressure from a son-in-law or daughter-in law.

In addition, this trust set-up for each child (after both your deaths) is the only effective way a child can guard against his or her inheritance being pulled into a nasty divorce and ultimately into the hands of the divorcing son-in-law or daughter-in-law.

(4) Financial Management

An important part of your estate planning is – at a minimum -- protecting the buying power of your assets. Inflation, investment scams, inadequate asset allocation, and lack of financial forecasting and budgeting, are factors that can erode your assets. Insidiously.

I have finance undergrad and MBA degrees and believe strongly this absence of financial management looms large as a threat for many clients. I also remain appalled at the hype we all read and hear every day for questionable investment seminars, scams, and get-rich schemes.

As a lawyer, I do not provide financial management or advice. But, I harp frequently on clients making sure their financial assets are not in harms' way in the broader context of their estate and asset protection planning.

Now, What is a Trust?

If you use the core planning I typically recommend, your primary estate planning document (for each of you) will be a living trust.

A trust is a written set of instructions that describes how you want your property to be managed and handled for you and your family members. The trust written provisions include various, flexible, adaptive options for dealing with future changes in the tax and non-tax laws, and in your family's circumstances.

You spell-out within the trust document how the relationship between the trustee and the beneficiaries works for the management of the
trust property. In the trust document you name the trustees (in many cases including you and thereafter family members).

You can revise and change a living trust at any time prior to your incapacity or death.

**What is a Trustee?**

A trustee has the responsibility for overseeing your property based on your written instructions in the trust document (e.g., a living trust). You and your family members can be the trustees named in the trust document.

Keep in mind, the trustee essentially becomes your *alter ego*. You can be your own trustee until your incapacity or death. Also, the trustees you name (including your family members) ideally need to be non-procrastinators, possess a degree of business and investment acumen, and not be "yes-men" pushovers.

Candidly, not all family members are suitable for stepping into your shoes. This is why you might choose now to name others for this responsibility, especially in the event of your incapacity or elderly years.

This next trustee point is very important for asset protection purposes. This deals with how your living trust can later trigger even stronger asset protection for your trust if down-the-road your surviving spouse or a child is acting as the trustee of his or her sub-trust (stemming from your living trust) and stumbles into a pending divorce, bankruptcy, or lawsuit, etc.

Based on the written provisions in your living trust, the surviving spouse or child can resign as trustee and at that time appoint a fully-independent trustee. This kicks-in the strongest level of asset protection for the trust assets. And, this resignation / independent trustee procedure is spelled-out in the written trust provisions.¹

¹ This stepping-down and appointment of an independent trustee is designed for a rip-cord, emergency situation. If the step-down and appointment of an independent trustee does occur, your family member
Your Core Estate Planning Documents

Core estate planning documents include (separately for each of you):

1. A revocable living trust;
2. A pour-over Last Will and Testament;
3. A financial power of attorney;
4. A tax-deferred retirement accounts power of attorney; and
5. A Georgia health care directive.

And, depending on each client’s circumstances, there are other trust and estate planning options available in addition to the above core documents. These are primarily for more-targeted specific tax-savings planning and more targeted asset protection. At your request, we can talk about these other options, and whether they apply to your situation.

My Flat-Fee for Core Estate Planning

I charge a flat-fee in most cases for the above core estate planning. The flat-fee itself is all-inclusive and includes three meetings with me, draft documents, explanatory letters, and all other work that gets you to the table for signing your final documents (this is the third meeting). I also will guide you in the direction of what questions and points you need to address to make this process as easy as possible.

In some limited situations clients want more than three meetings. Due to varying personalities, temperaments, occupations, etc., these clients prefer to spend much more time with this process than under the above flat-fee approach. There is no right or wrong approach.

who resigns as trustee cannot then step-back in as trustee. From that point forward, that family member's sub-trust can have only an independent trustee. The term "independent trustee" will be expressly defined in your trust document.
But, if you wish to have more than three meetings, I add my hourly rate on top of the flat-fee for the extra meetings (and related preparation time for the meetings).

In no event will I charge the added-hourly rate unless we first talk and agree that the rate will apply at the time you schedule the extra meetings, etc. My goal with the flat-fee / hourly approach is to give you more control over your time and expense for this core planning.

**Final Note:** This is only an introductory summary memo. I do not at this time represent you as your lawyer. This memo covers only general points and it not advice for any reader's specific situation. No reader can rely on this memo as legal or tax advice. However, you and I can sign a separate work engagement letter if you wish to have me handle this core planning for you. Please let me know by email or phone.

Please contact me if you would like my assistance with your estate planning or if you have any questions. I am licensed in Georgia, North Carolina, and New York.

Sincerely,

James M. Kane, at Kane Law LLC