

The Two E's of Estate Planning

Effectiveness and Efficiency

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Estate planning can be quite complex, but at its core the two aims are *effectiveness* and *efficiency*. In this paper I will address common estate planning issues; and general questions which can greatly impact the *effectiveness* and *efficiency* of each.

Effectiveness and efficiency defined:

Effectiveness ~ The ability of an estate plan to carry out a person's intended result.

Efficiency ~ The amount of time, effort, and monetary costs associated with executing adopted estate planning strategies.

While you are alive

Most people think of estate planning as simply an exercise to determine who will receive our assets after we are gone. Though this certainly is the *final* result, there are many estate planning considerations that could affect you while you are alive. I will begin with these.

Financial Power of Attorney: A financial power of attorney is used to allow someone else to make financial decisions for you if you are unable to do so.

Power of Attorney for Health Care & Health Care Directive: Though these documents are often combined, they are actually two documents. The POA for Health Care details who can make your health care decisions for you if you are unable. The Health Care Directive outlines what kinds of care you would like to receive or not receive should you be unable to communicate your wishes.

Effectiveness:

- Are these documents in place?
- Are at least two power holders named on each document?
- Have the documents been updated for changes in the law?

Efficiency:

- Will these documents become known and immediately available when they are needed?
- Do your named power holders know they are named?
- Do they know where to find the documents should they be suddenly needed?
- Are your named power holders physically close to where you live?

Revocable Trusts: Revocable Trusts are generally created to segregate separate property, provide assistance with the management of assets, provide continuity of asset management should the grantor not be able, and/or to shelter assets from probate and associated fees.

Effectiveness:

- Are the appropriate co-trustees named?
- Are the trust assets kept segregated as intended?
- Is the trust's language current given changes in laws and the financial status of the grantor?
- Have all the assets that should be held by the trust been properly titled and recorded?
- Are there assets better left without trust?

Efficiency:

- Do the trust's benefits exceed the additional cost and hassle associated with having it in place?
- Is the custodian/manager of the trust an optimal choice?

Gifts: Gifting is generally undertaken to reduce one's estate, assist loved ones, and help charities with their mission.

Effectiveness:

- Will the gifts being made be used as intended?
- Would gifting within or without a trust be more optimal to carry out the desire of the grantor?
- Will the recipient of the gift be responsible?

Efficiency:

- Which assets are the best to gift to reduce estate and income taxes for everyone involved?
- What is the projected income and estate tax of the intended recipient?
- Would the benefit of holding assets in trust exceed the costs?
- Would it be better to retain the asset until death in order to receive a step up in tax cost basis?

Community property agreements: Community property agreements can be used in some states. These are generally executed in order to receive a step-up in tax basis for assets owned by both spouses upon the death of the first.

Effectiveness:

- Has a community property agreement been considered and/or exercised?
- Do the spouses realize a community property agreement is not a Will?

Efficiency:

- Did one spouse bring considerably more assets to the marriage? How long have the spouses been married?
- Do the separate assets have low tax basis?

Business planning: Business planning generally involves the consideration of whether to sell, gift, and/or bequest shares in the business. Once a goal has been decided upon by the business owner, strategies must be put into place to accomplish it.

Effectiveness:

- Will the heirs have the desire or ability to run the business? Will other partners accept the new owners?
- Would you accept your partners' heirs as fellow owners?
- If the business is to be sold, do you have a succession plan?

Efficiency:

- If the business will be gifted in full or part, have "discounts" been fully utilized to reduce gift taxes and GST?
- Should the owner bequest the business in order to receive a step up in tax basis?
- Do you and your partners have cross-purchase agreements in place?
- Will your estate have the liquidity required to pay estate tax without having to sell the business?

Elder planning: Elder planning is generally associated with protection of assets in case a spouse enters a medical program which would cause financial hardship for the healthy spouse.

Effectiveness:

- Have you considered the possible financial effects of one spouse needing costly medical care?

Efficiency:

- Have you considered alternatives for hedging against the possibility of costly medical care?

Once you are gone

Once a person has passed the full effect of their estate planning is tested. The following estate planning issues are critical for you to consider.

Naming beneficiaries and co-owners: Many accounts such as IRAs, 401ks, and bank accounts allow a person to name beneficiaries. Many other accounts and assets (such as real estate) also allow for joint ownership where the survivor receives full ownership upon the first to die.

Effectiveness:

- Does the naming of beneficiaries and co-owners conflict with provisions in the owner's will?
- Are both primary and secondary beneficiaries named on each account?
- Are the named beneficiaries up-to-date?

Efficiency:

- Would *Income with Respect to Decedent* accounts be better left to charity?
- Would it be optimal for a particular asset to be owned in a single name?
- Which assets are the best to gift to charity to reduce estate and income taxes for everyone involved?
- What is the projected income and estate tax of the intended recipient?
- Would the benefit of holding assets in trust exceed the costs?
- Would it have been beneficial to attempt to maximize withdrawals during the decedent lifetime by using tax neutralizing strategies?

Guardians: Guardians are named persons who will take care of your children after you are gone.

Effectiveness:

- Have you named at least two guardians in your estate planning documents?

Efficiency:

- Have you discussed guardianship with the named persons?
- Are the named guardians able and willing to take on this role?
- Are there reasons why they should not be named?

Probate: Probate is the retiling of asset through court process. Estate plans often have both probate assets and non-probate assets within the same estate.

Effectiveness:

- Are you aware of which assets would be subject to probate and which would not?

Efficiency:

- Will your dependents be subject to financial struggle as your estate makes its way through probate?
- Are there strategies you could institute to avoid probate?
- Are there higher costs associated with probate in your state?
- Do you own property in other states that might be subject to ancillary probate?

Insurance: Life insurance is generally purchased for income replacement and/or estate liquidity.

Effectiveness:

- Do you have insurance adequate to replace your contribution to the household?
- Do you have trusts that will not be able to provide for your household as they do for you?
- Do you anticipate your estate will have liquidity problems?

Efficiency:

- How do you know if you're purchasing too much or too little insurance?
- If you own a life insurance policy would it make sense to transfer it to trust?
- If you own life insurance that has an investment component, does it still make sense to own it?

Taxes: Estates and gifts can be subject to Federal and/or State estate and generation skipping taxes.

Effectiveness:

- Are you aware of the taxes to which your estate might be subject?

Efficiency:

- Have you taken steps to reduce the impact of potential taxes on your estate?

Survivors: Survivors are the ones who are living after you have gone.

Effectiveness:

- Will your survivors be cared for as you anticipate?
- Are you sure you know exactly how your assets will be distributed by your estate?
- Do your heirs have special needs that have been considered?
- Will you leave too much or too little in your spouse's control?
- If you and your spouse have children from different marriages have you provided proper protection for your children?
- What would happen if your spouse remarried?
- Will your heirs be able to properly manage the assets you leave to them?
- How will your survivors divide your personal property?
- What can be done now to reduce conflict that may arise among your survivors?

Efficiency:

- What can be done to limit the costs and smooth the transfer from your estate to your heirs?

Conclusion

As you can see, estate planning can be quite complex. The issues I address in this paper are indeed plentiful, but by no means exhaustive. Each situation is unique, but everyone must understand and be comfortable with the *effectiveness* and *efficiency* of their estate plans. The best way to gain this comfort is to examine all accounts in conjunction with your estate planning documents, and then document your findings using checklists and diagrams.

Given the quantity, complexity, and importance of the issues I highly recommend you seek assistance from an experienced/credentialed financial planner or attorney who can give you assurance no stone has been left unturned.