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Estate Planning, the Right Way

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When Whitney Houston died in 2012, her will had sat untouched for 19 years. Between the time Houston's advisors wrote her will and her untimely drowning in her own Beverley Hills home, the record-breaking artist had signed the largest recording deal of its time – in 1993 – and gave birth to her daughter, Bobbi Kristina. The unchecked will locked Bobbi Kristina out of her inheritance for three years – she was 18 when Houston died and Kristina herself suffered a tragic death before receiving everything – but did receive a partial inheritance. Sopranos star James Gandolfini was not as fortunate, his estate was poorly planned, and taxes ate more than $30 million of his $70 million in assets.

If pop culture's biggest stars end up with estates that vanish or fail to receive the right attention, then how can the average investor or business owner properly prepare? Estate planning may be complex, but it can be dealt with thoroughly if planners begin their work early.

"The earlier that a person wants to start thinking about it, then the better off they are," said Michael Feinfeld, a manager in the trusts and estates group of Marcum LLP, a national accounting and advisory firm, during a recent interview with "Advisors Magazine."

Estate planning has to be dynamic, however, or clients can pass away with obsolete plans that fail to take into account a number of complications an advisor, or the client, failed to anticipate years prior.

"You can wind up with a plan that doesn't meet your needs at a certain point," Feinfeld said, adding that estate plans should be re-investigated on major life milestones such as deaths, marriages, or divorces. Clients also should take a look at their estate plan every five to seven years whether they have passed a milestone or not, he said.

Many people, however, put off estate planning again and again, only to have time run out.

"Will I die early?"

People delay estate planning – many people, in fact. A 2017 study by Caring.com found that four out of 10 Americans lack any sort of estate planning document, and 42 percent of Americans between 58-71 lack a will. The United States, also, is set to see the largest transfer of wealth in its history as millennials inherit approximately $30 trillion in assets over the coming decades, compounding the potential problems that could come from poor estate planning.

"I think everybody has different reasons for doing it or not doing it," Feinfeld said. "Usually, the people that I find who are willing to do it … They see the value in it because maybe they've seen a close loved one die, or they've heard horror stories that their spouse or parents have impressed upon them, or maybe they have a lot of capital and they're concerned about it."

Proper estate planning takes time, costs money, and just touching the idea can give some clients pause.

"Will I die right away? I've had clients ask me that question," Feinfeld said.

Financial guru and media personality Suze Orman has, at times, pinned the blame on older men afraid to “confront their own mortality.” That might be a component, but Feinfeld said there is not one simple reason for people’s hesitance.

“They go about their lives and they don’t think about it and they don’t want to think about it because it takes time and think eventually they’ll get to it,” he said.

Common Mistakes

Like Gandolfini, people often fail to carefully vet their estate plans, and sometimes give their prospective planners only a cursory vetting. Clients need to carefully examine who will be handling their estate, Feinfeld said, and they need to not only ask the right questions but be as open as possible.

“Don’t hold things back, you have to answer all of their questions,” he said, noting that many clients withhold information they consider embarrassing from planners. That does nobody any good, however, as it can complicate the plan later, and leave it open for challenges in court.

Prospective clients should come to a meeting with a potential planner armed with a full accounting of what assets they have, an understanding of their family dynamics (and the willingness to share this openly), and idea of how they want their estate to be handled. The key question to ask is, “Who should manage the estate in the event of death or incapacitation?” Feinfeld added that, in addition to finding a planner you can be open with and who asks enough questions to establish a full financial profile, clients should trust their advisors when meeting them. And clients also should keep in mind that expensive planners often have been at work for some time and could very well be worth the price.

Many clients fail to account for remarriages and children from multiple partners as well, Feinfeld said. Estate planners need to know about previous relationships and children who may no longer be in the picture, but who the client wants taken care of.

Most importantly, the biggest mistake clients seem to make is not being invested in the estate planning process, or wanting to simply “Get it over with,” he said.

“I try to get in front of people and get them to pay attention to it, but really it has to come from within,” Feinfeld said.

Business Succession

Developing a robust plan to transition a business to new owners, or operators, also can be an overlooked aspect of estate planning. Again, many small business owners – particularly those at closely held, family owned firms – fail to consider the dynamics that might come into play following a death, and whether some family members may feel entitled to more of the business than the founder agreed was appropriate.

“Lots of businesses don’t think about that aspect, for closely held businesses,” Feinfeld said. “They can be big companies, they can be $100 million companies, but they’re still closely held, they’re held by family members or they’re private.”

Business succession, like general estate planning, comes back to deciding who should be in control after the founder or asset-holder is out of the picture. And failures of imagination are usually to blame when founders pass on and leave a firm in disarray due to family infighting. Founders need to anticipate who might have a conflict during the succession period – and they need to bring in their other financial professionals as well, such as their wealth manager.

“Planning for a business is more than just hiring an estate planning attorney,” Feinfeld said. “The advisors need to talk to the clients about how the business is going to be run and what the plan is. For example, if you have two siblings and they’re fighting over how one has been involved in the business and the other hasn’t, then that’s another issue. That’s a key problem in business succession, and I’ve seen horror stories with that.”

Trust your Planner

Negativity toward financial professionals and the services they provide has become more common since the 2008 global financial meltdown, but it’s an unfair view to hold toward the majority of estate planners, Feinfeld said.

Feinfeld himself became committed to estate planning after his father died shortly following a pancreatic cancer diagnosis. For him, preparing clients’ estates is a personal, as well as professional, mission.

“There’s a lot of cynicism about what we do nowadays,” he said. “The estate planners that I know are pretty dedicated people and they care about making sure that people get the right plan in place for their families. For a lot of us, it’s a personal thing. Sometimes you can’t just commodify the value of a plan.”

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