Family wealth from a big picture perspective

By Scott Mahon and Scott Winget
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Executive summary

The process of developing long-term strategies to manage family wealth requires careful thought and well-coordinated tactics focused on achieving far-reaching wealth planning objectives. It is all part of a well-structured wealth plan.

All too often, plans are established that are focused primarily on minimizing the tax burden. Individuals and families need to be careful that the tax “tail” isn’t wagging the wealth planning “dog.” Decisions that appear to generate favorable results from a tax perspective may not always be aligned with your broader legacy goals.

Taxes may even have less of an impact on legacy planning decisions today given the existing laws surrounding gift and estate taxes. In 2017, the first $5.49 million of an individual’s estate is exempt from gift and estate taxes (the number is adjusted annually to reflect inflation). What’s more, the spousal “portability” feature allows any unused exemption of the spouse who passes first to carry over to the surviving spouse (on top of the $5.49 million exemption that already applies for the surviving spouse). From a gift and estate tax perspective, the vast majority of families need not be concerned (note that these changes do not affect the rules around the Generation Skipping Tax. Consult your tax advisor for more information). But if you have accumulated more wealth, you need to maintain an eye on the tax ramifications as you make your legacy planning decisions.
No matter the value of your estate, chances are your goals center on managing and passing on wealth in the most prudent manner possible. Therefore, the strategies you put in place should be created with those objectives in mind. It is important to consider multiple filters and view your legacy plan through different lenses, with tax considerations being one of many.

This often requires coordinated efforts of financial and investment advisors, attorneys and tax professionals who are familiar with your circumstances. A team of professionals, working in your interest, can help establish a comprehensive plan that serves as a guide to the key financial and family decisions you need to make through life.

**The state of your estate today**

When it comes to legacy planning, if you are like some people, you may fall into one of two categories:

1. You’ve done some basic planning, such as creating a will and/or naming beneficiaries on key accounts such as a workplace savings plan and retirement accounts.
2. You’ve put together an extensive estate plan, but much of the emphasis has been on identifying tax-efficient ways to transfer assets before or after your death.

Either approach can fall short of a goal of accomplishing what matters most to you as you determine how best to transition assets to others — the goals you actually want to achieve beyond the scope of reducing the tax burden.

There are ways to build a legacy plan that combines the true vision you have for the future of your assets with responsible tax management. It starts with thinking about a variety of issues such as:

- The values shared between you and your targeted beneficiaries.
- The level of control you want to retain over your assets.
- Making sure your family and other key beneficiaries achieve real financial security.

**Wealth transfer considerations**

The most complex strategies often relate to the disposition of assets in your estate either during your lifetime or after your passing. Legacy planning needs to explore a variety of issues, but in many cases, individuals become overly concerned with uncovering the most tax-efficient ways to transfer assets. The challenge is to be certain that any decisions that achieve tax efficiency do not detract from other important goals that need to be included in the decision-making process.
Legacy planning done right requires time and careful thought. Along with identifying ways to minimize the tax impact of passing on assets, other considerations deserve similar attention, including:

- **Protecting family financial security** – making sure the financial interests of family members are taken care of in the most appropriate way.

- **Maintaining appropriate control over assets** – careful planning can strike a balance between controlling the distribution of assets and providing sufficient flexibility to empower beneficiaries, all while ensuring your best intentions are carried out.

- **Keeping your estate matters private** – taking specific steps to assure that the details of your estate plan remain confidential.

- **Protecting assets from creditors** – safeguarding wealth that could be at risk by taking appropriate measures.

- **Identifying a trustee** – naming a person or entity responsible for overseeing many aspects of your estate.

- **Giving flexibility to a surviving spouse** – effectively positioning trusts to give the surviving spouse more say in the disposition of assets.

Each of these represent important elements of the estate planning process and are worthy of significant consideration as your legacy plan comes together. Included in this paper are additional details about each of the aspects of the planning process.

**Assuring financial security for family members**

The financial interests of family members are generally a top priority in any financial decisions you make regarding the long-term disposition of your assets. A variety of strategies can be put into place that may help to protect the interests of a surviving spouse, children, grandchildren and subsequent generations.

Specific strategies are available that may help to assure your wealth is passed on to your intended beneficiaries. One example is an approach that may protect the financial interests of children from a previous marriage. Without careful planning, assets from an IRA, for example, could easily be left in the control of a second spouse and potentially benefit children from his or her previous marriage, leaving your own children out of the picture. You can structure plans that address this particular concern and assure that intended family members are the ultimate beneficiaries of your wealth.

**Controlling assets**

Actions can be taken that may allow you to maintain control over how assets that you’ve transferred are distributed, even after your death. For example,
trusts can be structured to make payments to beneficiaries only when they have attained certain milestones that you specify in a trust document, such as reaching a particular age or graduating from college. Likewise, you can name a trustee and provide detailed guidance to that trustee on how to manage distributions from your estate.

This is a way that may protect and could ultimately extend the life of your assets. By limiting the amount of control beneficiaries will have over assets, you may prevent those who are less experienced with money or lacking the proper appreciation for how to manage a large amount of money, from making major financial mistakes. Providing this level of specificity in your documents helps ensure beneficiaries don’t exhaust assets well before the time that should occur.

However, retaining too much control over your heirs after your death can actually have a negative impact and limit their development. It can also lead to serious resentments and conflict. Try to balance control through specific language in your estate documents with educating and empowering your beneficiaries so that they can use the assets to make a positive impact.

Maintaining privacy

It may be important to you to keep elements of your legacy plan confidential. An estate that must go through the probate process becomes a matter of public record, including details of what you owned and to whom it was left. In public hands, this information can be highly sensitive. By establishing trusts, the probate process may be avoided and public information about your estate would then be restricted.

Protecting your assets from creditors

Depending on your circumstances, you may want to take steps to protect assets from the claims of others in the future. This is often necessary for medical or other professionals who may be subject to lawsuits. It can also apply if you have been through a divorce and want to preserve assets for specific beneficiaries. Different approaches are available that may help protect assets in these situations. One strategy is to place some portion (many recommend one-third to one-half) of your assets into an asset protection trust. It can be structured to attempt to generate income to help meet financial needs over your life. Such a trust may prevent creditors from laying claim to those assets.

Naming a reliable trustee

If you create trusts to help manage the disposition of assets, one of the critical decisions you need to make is to name a trustee that you can rely on to make some or all decisions about the timing and amount of specific distributions consistent with your intentions. Although you can include specific directions in trust documents, there can be advantages to allowing the trustee to retain
more flexibility. Examples of why leaving more discretion to the trustee is preferable include the potential for changes in circumstances surrounding the investment environment, the economy or individual beneficiaries. When a trustee has control, the trustee can make necessary adjustments.

The use of a trustee places a premium on selecting an individual or entity whom you trust and who has the capabilities to handle the duties. Trustee selection is one of the most important considerations in the legacy planning process.

Providing flexibility to a surviving spouse

Current estate tax laws, including the $5.49 million individual exemption and the portability feature, give married couples much more flexibility in managing their estate. One approach is to provide for disclaimers in your wealth transfer plan. It gives your spouse the ability to disclaim part of the estate that you have passed on. Those funds can be placed into a bypass trust to avoid estate tax. It is also possible to pass such a trust on to children who are named as beneficiaries. A disclaimer trust recognizes the reality that estate planning can become significantly easier to manage after the death of an individual. It allows your surviving spouse to make more timely decisions about the disposition of family wealth with the help of an attorney and other professionals. However, good communication is paramount in this situation. A disclaimer only works appropriately if the spouse is aware of it and holds your same values about the general disposition of assets in your estate. All parties should be familiar with the decisions that need to be made and should be in agreement about your overall goals for the estate.

Throughout the process, it is important to remember that there are no “one-size-fits-all” solutions to transferring wealth. Legacy strategies must be structured to meet individual objectives. This is why careful planning with a team of professionals focused on your specific needs and goals is critical as you plan for the transfer of wealth.

Practical steps to consider

Whether you already have wills, trusts and other estate planning documents in place or need to have them created, there are a number of priorities to consider as you move forward with the legacy planning process.

Here are six steps that may be appropriate for you to complete as you consider the ongoing management and ultimate disposition of your wealth:

1. Take time to carefully determine what exactly you want to have happen

   Thinking about the future of your money, particularly about that period when you may no longer be in the picture, isn’t easy to do. But before you make specific decisions about what’s best for your wealth, it is wise to spend significant time considering what it is you really want to see happen with it.
Talk to advisors and peers to learn what your options may be and assess the strategies that appear to make the most sense for you. While you may read articles or receive advice about how to protect your estate from the impact of taxes, remember that tax avoidance is not the only objective of your legacy strategy, and may be less important than other objectives. Consider all of the issues that were identified in the first half of this paper to determine how to appropriately structure your legacy strategy.

2. Make sure family members are prepared for what’s ahead
Depending on your circumstances, a child or grandchild may stand to receive a significant sum through gifts, trusts or an inheritance. No matter how much you respect the judgment of a beneficiary or trust his or her ability to handle finances, the fact is that money can change people.

What you can do in advance is talk to those who will be on the receiving end when your wealth begins to be distributed. Explain your values about money to them and seek assurances that they too will live by those values. You can even spell out your wishes in any legal documents created for your estate. It doesn’t assure that everything will turn out as you hoped, but taking the time to help beneficiaries prepare for what’s ahead may create the best opportunity for a positive outcome. (For more ideas on how to proceed with this, see our Insights paper titled “Live Long and Prosper: Creating Trusts with Heart and Soul.”)

3. Protect family members who will share assets
In situations where beneficiaries will need to share in the management of a particular asset, such as a business or real estate, it is important to consider potential conflicts that could develop long after you are gone.

For example, what happens if one of the beneficiaries wants to sell his or her ownership stake in the future? This can create serious challenges for the family unless you’ve laid out specific guidelines that beneficiaries can follow. Rather than let other beneficiaries dictate the terms of any sale, you can specify terms of how a sale can occur to assure that it is fair to all parties while not putting the entity at risk. Providing this level of guidance in advance is a way to foster long-term family harmony and avoid potential legal entanglements between beneficiaries.

4. Provide specific instructions, but use consistent language
Consider the needs and capabilities of each beneficiary when determining how your attorney drafts language in any documents related to the disposition of your assets. At the same time, try to incorporate guiding principles that provide some consistency to help clarify your intentions if questions should arise in the future.

Trusts can be drafted to include terms that are specific to each beneficiary, but also keep in mind the importance of having guidelines in place that
will make clear to the trustee your key objectives. This can help provide some direction to the trustee without hampering his or her ability to react to changing circumstances. Providing clear guidelines can help the trustee make decisions that account for the realities that may exist in the future, but are generally aligned with your ultimate intentions.

5. Carefully assess your charitable intentions
Think about the reasons you make charitable contributions. Many organizations seeking donations emphasize their tax-deductible nature. But remember even though there are tax benefits, charitable giving still means a financial sacrifice on your part. Because of the tax benefits, there can be strategic financial reasons for making charitable gifts. But above all else, the purpose of these contributions should be to fulfill your charitable intentions, not to generate tax savings. Keep in mind that depending on your income, the amount of the contribution that you are able to deduct on your tax return may be limited. Regardless, charitable giving strategies can play an important role in your overall legacy plans, but be sure you are making them for the right reasons.

6. Consider your options with existing trusts
You may already have trust documents in place. If you feel some of the issues discussed in this paper are not appropriately addressed in your existing estate planning documents, you can consider having your attorney re-draft them as needed. If any of the trusts you already created are considered “irrevocable trusts,” it does not necessarily mean that changes are out of the question. Some states permit modifications to an existing trust, either with or without court supervision (depending on the state).

Alternatively, certain states now have “decanting” laws that allow for the creation of a new trust without going to court. The new trust can contain updated terms that may better reflect your desires. Assets of the old trust are “poured” into the new trust that will now govern the disposition of assets. If you live in a state that does not allow this level of flexibility, another option is to actually consider moving the trust to another state to accomplish the desired changes.

Conclusion
As you pursue your legacy planning objectives, don’t let tax strategies solely drive the process. The most important step is to carefully consider the specific objectives you wish to achieve with your estate while living and after you pass on. This requires you to focus on the intended outcomes you want to accomplish as your assets are passed on to beneficiaries or designated charities.

To the extent you can make choices that may limit any potential tax burden for you or beneficiaries, it makes sense to do so, as long as those decisions...
are consistent with your primary objectives. Remain focused on what may be effective ways to distribute your wealth in line with the ultimate goals you have for your estate.

Rely on the expertise of your financial, legal and tax professionals to work with you on your legacy strategy. Our team at Ascent Private Capital Management of U.S. Bank is prepared to guide you through the process to help you determine the solutions that are best suited to your wealth planning objectives.
About the authors

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