

ESTATE PLANNING FOR THE SANDWICH GENERATION

March 2003



About 50 years ago, in the not too distant past, personal events happened in a predictable manner. We grew up, married, reared children, possibly were still around for the birth of grandchildren, and our time came to leave this earth at the ripe old age of late 60's or early 70's. Each generation left the estate to the children because the children's needs were still prevalent when the time came. They were rearing small children, growing in careers and still struggling to make ends meet.



In recent years, this scenario has changed dramatically. It is not unusual for people to still be alive in their 90's, and the club of those who reach 100 and beyond is rapidly growing. Not only do we get to meet our grandchildren, we also get to attend their graduations and marriages. We often get to meet our great-grandchildren and watch them grow. We watch our children retire. We sometimes have the sad task of attending their funerals. The family we want to provide for when we are gone is much larger and the needs more diverse. At the same time, we are more likely as we get older to encounter a disability that uses up some of that "nest egg" that we put away. We can no longer predict with any accuracy whether we have enough saved for our needs or whether we will leave something behind for our loved ones when we are gone.



At the same time we are planning our own estate, we may need to provide some assistance to our parents or grandparents. With seemingly limited resources, we need to decide how much we can assist our parents and when to stop assisting our children or grandchildren. How can we provide for both if something happens to us? For some, planning for our own needs in declining years isn't even an option. For others, the lucky ones, the nest egg that our ancestors put away will be more than adequate and opportunities arise to make some very wise estate planning decisions.



Anyone with parents (or any older generation) and children (or any younger generation) alive at the same time is part of the Sandwich Generation. If your parents are deceased, or if you do not have children, then the concerns listed here may not apply to you.



Focusing Our Assets On The Generation That Needs Us Most



Experienced estate planners suggest that our obligation is to the generations below us. With few exceptions, an estate should not be left to generations above us. That does not mean that we should not provide some assistance to parents. Rather, it means that any provision for an older generation should be made in a way that will not create taxation problems or preclude assistance programs that may be available.



Focus On Children And Grandchildren Obviously, if we have named guardians for our children and they are now grown with children of their own, our documents should be changed. What is not so obvious is that their financial needs may shift over the ensuing years, and we should take that into account in our provisions for them as well. Our children remain the natural objects of our bounty, however, even if their circumstances appear to be adequate for their needs. We are always mindful that circumstances change suddenly.

A good plan should provide for the changes that occur without time to adjust documents to take those changes into account. Such a plan should provide distribution if children survive, but contain a contingent plan if they do not.

Example: Pat's Will provides that upon his death, his estate will be equally divided between his two children. Because both children are mature and are making a good living, these bequests are outright. In the event either of Pat's children fail to survive him, the bequest for that child will pass instead to the child's children (Pat's grandchildren). Since Pat's grandchildren are immature, Pat has provided a contingent trust for any gifts passing to them that will pay for education and support if needed but will not pass outright to the grandchildren until they are more mature.

Focus On Parents Or Older Family Members . What if there are no younger generations left? What if all are traveling in an auto together, and all are killed? What if the needs are greater in the generation above? How can we provide then for other family members who are our next area of concern?

If there are no younger generations who will need our resources, we may want to make certain that other family members are adequately provided for. In some cases, we may want to set aside funds for this purpose even if there are younger generations in line to receive the bulk of the estate.

The best way to provide for family members of an older generation is by a discretionary trust for their benefit. The trustee could be a family member who could see that needs are met and then distribute any remaining assets to other beneficiaries.

Example: Gail's Will establishes a trust for her mother, who has modest assets and income. After the amount Gail has set aside for the trust, the remaining estate will be distributed to her two children. Gail's sister will be the trustee of the mother's trust. The trust will supplement mother's income and will be available to take care of her expenses if necessary until her death. Upon mother's death, the remaining assets will be distributed to Gail's children. If either child is not then living, that child's children will receive that bequest. The trust will not be part of mother's estate and will not be subject to estate or inheritance taxes on mother's death. The trust is structured so that if mother needs to receive Medicaid assistance, the trust will not be consumed.

Disclaimers – Post Mortem Estate Planning

Disclaimers are ideal instruments for the sandwich generation. It allows estate planning to be made at the ideal time – after the death of the decedent, when the content, nature and size of the estate and the needs and circumstances of the beneficiaries of the estate are known.

The concept of a disclaimer is simple: gifts require both an act of giving by the donor and an act of acceptance by the donee. If the donee does not wish to accept the gift, he or she may reject it in certain ways set out in the law. The result is that the rejecting donee – the disclaimant – has stepped aside to let the gift pass to others as though he or she were never there.

Qualified Disclaimers. A qualified disclaimer is an irrevocable and unqualified refusal by a person to accept an interest in property. A qualified disclaimer for federal gift and estate tax purposes must comply with the requirements set out in Section 2518 of the Internal Revenue Code. In addition, each state has requirements for disclaimers that must be met.

Tax Consequences Of Disclaimers. When properly drafted, a disclaimer can shift property to another person with no gift tax imposed on the disclaimant. Further, it can be used to save estate taxes in the disclaimant's estate.

Example: Joe's Will leaves certain securities to son, but if son predeceases then to son's children. If son accepts the bequest, and then passes the assets to his children during his lifetime, the transfer will be subject to son's gift tax. If son accepts the bequest, and then passes the assets to his children at son's death, the transfer will be part of son's estate and subject to son's estate tax. Son chooses to disclaim the bequest from Joe, allowing the assets to pass directly to his children. As a result, son has no gift tax liability for the assets disclaimed and the assets will not be included in son's estate at son's death.

Parents rarely discuss their financial arrangements with children, including their estate plans. Children whose parents have recently died should always consider whether disclaimers would be wise in the existing situation. Children who have adequately provided for their own needs may want to ask their parents to include a contingent plan for grandchildren that would set in place appropriate arrangements if assets were disclaimed.

Disclaimers have very specific requirements and professional assistance should be obtained as soon as possible. For more information on Disclaimers, contact our office for the Disclaimer reprint.

Non-Financial Issues For The Sandwich Generation

While most estate planning is focused on passing assets to the next generation, it is important to keep non-financial issues in mind as well. Children who may need to assist parents in transitional living arrangements or to make medical decisions because of an unfortunate circumstance should receive advance guidance concerning the wishes of the parent.

Transitional Living Arrangements. Most people say that they want to live out their lives in their own home. However, the

statement fails to take into account a variety of circumstances that may exist when a decision needs to be made. An individual isolated at home because of physical weakness or some incapacity can be a danger to themselves or others. However well meaning, any family member who attempts to take care of a loved one suffering advanced Alzheimer's or declining physical abilities may find themselves at risk.

Experienced elderlaw attorneys suggest that the family sit down together to discuss a variety of circumstances that would suggest that it is time for a change of living arrangements. Some families have even toured assisted living facilities or nursing homes well in advance of needing to consider them. Many have checked into resources to help the loved one remain home as long as possible, including determining whether Meals on Wheels would be available and whether someone could take the loved one to appointments or to shop for toiletries or other necessary items. This problem is particularly wrenching if family are not locally available. If the family can together determine the trigger points for change, it should be easier on all if/when the time comes.

Medical Decision Making. Anyone who appropriately names the person(s) to make medical decisions when they are unable should give those persons some guidance about those choices. While we make our own "informed consent" decisions as long as we are able, if someone else needs to step in they should know what decisions to make. Again, the family should sit down together to discuss what kinds of decisions may come up and how the individual would want the decision to be made.

For leaving written guidance, contact our office for a personal medical checklist. This is not a legal document, but a grid to show the decision maker how you feel about certain medical treatments or procedures under certain circumstances.

Summary

Members of the Sandwich Generation are aware of the competing demands of our time and resources due to the needs of generations above and below. We need to give careful attention to how we provide for all our loved ones when we are no longer in the picture. At the same time, we need to minimize the uncertainties of our own declining years for those who will need to assist us. For further information or to have your existing estate planning documents reviewed, contact your attorneys at Thomason and Hessmer.

In March 2003, Thomason and Hessmer will sponsor a series of lectures in our offices on (1) revocable living trusts including why and when to use them and how to operate them once they are in place, (2) providing for children and grandchildren, and (3) leveraging gifts to maximize gifts to family while minimizing estate tax. Call our office (301) 654-5112 Ext.225 to register for any of these lectures. You may also request reservations via e-mail addressed to info@thomhesslaw.com. You must include your full name, address, telephone number, the number of persons attending and the session(s) you wish to attend. Reservations are complete only after our office contacts you to confirm.