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Coordinating Your Estate Plan

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Introduction – Why Coordination is Key to Your Planning

Everyone understands the need for certain critical estate planning documents such as a will (and perhaps a revocable trust), health care documents (such as a health care proxy designating an agent to make health care decisions) and a durable power of attorney for financial matters (empower a designated person to make financial and legal decisions if you cannot). Everyone also understands the need for financial planning, having income and other tax returns prepared, insurance coverage as appropriate, and so forth. But what is often overlooked, to the detriment of many, are coordinating all of these otherwise disparate components of your planning.

Lack of coordination happens for a variety of reasons. Human nature is such that we often tend to focus on the bigger and more important steps. That's a good thing, but it doesn't negate the need to address the secondary coordination steps. Many advisers stick within their areas of expertise, e.g., your lawyer drafts documents, your CPA files tax returns, and your investment adviser fine tunes your asset allocation. Also, many coordination steps are rather nuanced, and are thus easy to overlook. Whatever the reason, most plans can be enhanced by focusing on coordinating various aspects of your plan. While "coordination" might sound as exciting as watching paint dry, that should not negate the importance of your pursuing it. This article will provide concrete examples of how you can enhance the coordination of your plan and some of the benefits you might receive from doing so.

Coordinating Communications and People

One of the best ways to foster coordination of your plan, not only in theory, but in implementation, it communication. You should communicate your wishes to key loved ones and persons you are naming in important capacities such as agents, trustees, etc. It seems that most people find these conversations uncomfortable and avoid them. But preparing your heirs and fiduciaries for their roles, and what might occur, can be a vital step in avoiding issues during transition periods (e.g., you fall ill and your agent has to take over). If you have named someone as your health care agent to make medical decisions, it is important that they know that they have been appointed, what their responsibilities might be, and what you would like them to do. Often the assumption is made that family or a close friend "knows" what you want, but in reality that is often not the case. Even if the people you appoint know your wishes, having an open and frank discussion with them may make their serving in that role easier when they have heard if directly from you.

It can also be a tremendous help in setting reasonable expectations for heirs. That fact alone may deflect disputes or worse litigation by heirs. If heirs anticipate a different share of your estate than they will receive, or have expectations of an inheritance that is a multiple of what they will likely receive, the disappointment that creates can lead to a host of issues. Havin the tough conversations with them, even if you introduce just limited information and introduce more over time as you become comfortable, can accomplish much to mitigate potential problems. For example, if you have children or other heirs you can initially have a general discussion with them without using numbers. You may not provide any numbers as to your wealth to them for years, if ever. But still having the general discussions can be fruitful. You might discuss with your advisers having one or more at a meeting. That way, your fiduciaries and heirs will know who will be involved to help.

Coordinating Advisers – A Team Approach

One of the most important aspects of coordinating your plan, and the one people often intentionally avoid, is coordinating all of their advisers. The bottom line is simple, if your CPA, estate planning attorney, trust officer, insurance consultant, wealth adviser, and other planners are in communication and act in a coordinated manner, you might realize important improvements to your planning. Several possibilities are listed below. But if this is the number one item to coordinate, why does it not happen routinely. There are several reasons. First (sorry) is cost. Many professional advisers bill for their time and too many clients are concerned about avoiding the cost of not just one, but two ore more advisers all billing for their time. But that perspective is incomplete. The real analysis is what net benefit/savings might you experience by having your advisers coordinate? Costs incurred is only part of the equation.

Frequently clients tell their investment professionals or trust officers that they would prefer they not communicate with their CPAs and attorneys to avoid the bills. But your CPA and attorney add expertise that your financial and trust professionals cannot provide. This can be confusing because many financial advisers have estate planners and others on staff. There is no reason not to take advantage of that expertise (especially if those services are provided at no additional cost), but that is rarely a substitute. The other reason that coordination is lacking is the various adviser often do not appreciate the nuanced planning that other advisers on your team can provide. So, what is a practical solution? Foster coordination and collaboration, but in a controlled and cost-effective manner. For example, if you meet with an adviser have them prepare a summary of key points, facts and decisions of that meeting and circulate it to your other advisers. That can assure that everyone knows what your other advisers are doing, but the incremental cost of each adviser reviewing a short summary of points may be much less than having more involved meetings or worse, miscommunications. You might consider having a memo circulated to advisers before it is sent to you so that all your advisers can weigh in (be on the same page) before the communication is sent to you.

Periodic meetings are really important for your team. How often those should take place and how they should be handled will depend on your wealth level, the complexity of your planning, etc. Let’s say you and your advisers have determined that there should be a meeting every third year to coordinate and review the status of all of your planning. If all your advisers have been kept “in the loop” with the summary memos noted above, the periodic review meeting will be more efficient and take less time. Have one adviser take the lead and prepare an agenda of points to review at the meeting from the perspective of each adviser and your overall plan. Consider having the meeting by web not in person. That avoids the travel time for everyone (and the charges for advisers that would bill for travel). Web meetings also curtail many of the social formalities that add to the time and hence cost of a meeting. Finally, have the adviser who prepared the summary memo lead the meeting and keep everyone on point. All of that can substantially reduce the costs of such a meeting.

What are some of the benefits that might be achieved from such coordination of your advisers?

• *Paying bills from incorrect accounts.* This is a common issue that can undermine a plan way out of proportion to the incorrect bill payment. For example, if you incur legal fees for your estate plan but pay them out of a trust account, or a business entity, that could be argued by a creditor to be a personal benefit from a trust you are not a beneficiary of, or that violates the business purpose of an entity. That could expose all trust or entity assets to an attack. Reviewing these formalities periodically with your advisers and fiduciaries might help safeguard your entire plan. Paying expenses personally, e.g., trustee fees, for a trustee of an irrevocable trust, might trigger the need to file a gift tax return and address the generation skipping transfer (“GST”) tax status of that trust. Again, small errors can cause outsized issues. Input from your CPA, trust officer and estate planning attorney may all be necessary to avoid these issues.

• *Swapping assets in or out of a trust.* Many irrevocable trusts created for estate planning or asset protection purposes are structured as grantor trusts with the income of the trust reported on your personal return. It may be beneficial to swap assets out of such a trust back into your name. For example, if your estate planning goals change and you want to gift or bequeath a business or investment asset held in an irrevocable trust to a different heir, a swap might help you do that. But you need the coordination of your investment adviser or corporate attorney (depending on the assets involved), and your estate planner.

• *Gain and lost harvesting from your investment portfolio can be important to enhance your net of tax investment results.* But this requires not only your wealth adviser’s involvement, but your CPA, and perhaps (certainly initially) the estate planning attorney that created trusts or entities that own investment assets so that the wealth adviser and CPA are clear on the legal/tax structure of your trust.

• *Asset location not just allocation.* Your asset allocation is the portion of your assets invested in equities or other asset classes. While your asset allocation may be determined by your wealth adviser, the location of those assets requires a more refined view of your plan. That might require the input of your estate planning attorney and CPA. Asset location is which "buckets" should hold which assets. If you live in a high tax state (e.g., NY or CA) and have a non-grantor trust (a trust that pays its own income taxes) created in a low or not tax state (e.g., FL or AK) there may be an advantage to holding certain investment assets in that trust to avoid state income tax. If you have a dynastic trust intended to last for generations, perhaps growth assets should be concentrated there. Your investment adviser may not be able to ascertain these nuances without input from other advisers.

Coordinating Primary Documents

Beneficiary designations, wills, title to assets and more should all be planned and coordinated. Title to assets refers to how you own assets.

You might own an asset in just your name. In that event when you die the asset will pass through the probate process and be distributed as your will provides. If you are incapacitated your agent under your financial power of attorney will have to act with respect to the asset to help you (e.g., to use funds to pay your bills). Many people have assets held in joint name so that on death that asset will pass to the named joint owner without going through the court required process to admit a will and the probate process. However, that approach may be misguided. The person named as joint owner may not be the ideal person you designated under your financial power of attorney to handle financial and legal matters if you cannot do so. Also, avoiding probate is rarely the primary or even an appropriate primary goal. For example, naming a child as a joint owner (or using a pay on death or transfer on death account) might assure that child receives the asset when you pass, but it also assures that if the child is sued or divorced that asset may be placed in jeopardy. In many cases a trust formed under your will (or your revocable trust) can safeguard those assets from divorce or lawsuits. If you're wealthier, the trust can keep the assets outside the child's estate and help preserve estate tax benefits for future generations. But for all those benefits of better planning as you age (or if you are incapacitated) and to protect those assets, the title to the account has to be coordinated with your planning, and particular the title of a brokerage account, for example, with your will and financial power of attorney. If you have a revocable trust that addresses both your incapacity and trusts for heirs, perhaps retitling the ownership of that asset (but not retirement assets) into your revocable trust is the solution. The right solution for you requires coordination of title to assets and all of your planning goals.

Let's say you have a life insurance policy and your goal is to have your estate pass equally to two nieces of yours. Then if your will leaves assets to the two nieces equally (or better, in trust for them) your insurance policy beneficiary designation should similarly reflect your two nieces (or better perhaps a trust for them, or the policy itself if large, might warrant transfer to a special trust to hold insurance). So, coordination of your all of your planning might be critical to accomplish your goals. But that is not always the case. You might have a child you wish to leave the bulk of your wealth to, and have named a trust for that child as beneficiary under your will. You might have the two nieces above who lost both their parents and you want to help them out with the insurance policy. In that case, the beneficiary of your life insurance might appropriately be your nieces and the beneficiary under your will your child. Whatever your goals are all of your planning (beneficiary designations, will, revocable trust, account titles, etc.) should all be coordinated. It is common for these various matters to be overlooked, or to be left unchanged when your objectives change. For example, your nieces are now older than when you set up the plan and both are working and have families. You might no longer feel the need to provide the insurance benefit. But did you update the beneficiary destination? It might be helpful when you have multiple goals and different beneficiaries to write up a summary explaining what you have and what your goal is to help guide you and your advisers to keeping the various assets handled consistently with your current wishes.

Coordinating Ancillary Documents and Agent Appointments

Coordinating ancillary documents can be really important, and also easy to overlook. And even though we are calling the documents and appointments discussed here "ancillary" they may affect valuable and critical matters relating to your finances and planning. For example, it is common to name a person, your agent, under a financial power of attorney. That person is charged with handling legal, tax and financial matters if you become incapacitated, or even are just struggling with challenges of aging. But how much authority does that person have over all of your key financial resources? Many people sign a form power of attorney with little thought about the potential conflicts and issues that may exist. Consider:

You name your son as agent but your daughter is listed as joint owner on key bank accounts. Who has authority to act?

• The Social Security's Administration ("SSA") has a Representative Payment Program that provides for financial management for a recipient of Social Security and SSI payments if the person is incapacitated. Your niece is named as your financial agent under your power of attorney, but your brother was listed years ago as the representative for receipt of social security benefits. Who can act as to those benefits? What conflicts may arise if your brother and niece don't agree?

• Some people sign a guardian designation indicating who they would wish a court to appoint as their guardian in the event they are incapacitated. You might wish to coordinate this type of document by naming someone to be your financial guardian that is coordinated with the successor trustee under your revocable trust and the successor agent under your financial power. Separately, you might choose to name a guardian of your person and coordinate that with the persons named as health care agents, and under other health care documents.

• You have a long-term care insurance policy. Your sister is your financial agent but your brother, who you have not spoken to in many years is listed as your long-term care insurance designee. That means if you fail to pay premiums your brother, not your sister, will get notice that because of the failure to pay premiums your coverage may lapse. If you are now estranged from your brother he may just ignore the notice and your sister may not find out until it is too late.

• When you fill out the enrollment application for a 529 college savings plan (e.g., for a child or grandchild) you can name a successor or contingent account owner. This is an important decision. If you were to die or become legally incapacitated, the successor account owner assumes all rights and responsibilities for the 529 account. Is this the same or a different person as other people named? Should the person be, for example, your child who is parent of the grandchild for who the account was set up for, or should it be the person you named as agent under your financial power of attorney

The point is that there are many different agents and positions that can be appointed. Often people sign a financial power of attorney (and perhaps a revocable trust) with their estate planning attorney and no one looks into all the conflicting appointments. Consider the problems that can be created by the wrong people getting notice, and even merely the involvement of so many different people. Coordinating who has what rights can be really important. A common situation that creates this issue is if you move to a new home and create new accounts and new relationships. Some of the arrangements created in your old home may remain, and new ones that conflict are often set up without realizing the consequences.

Similar issues can arise in the context of health care matters as well. There are a number of different health care documents and you should try to coordinate who is named in each, unless there is a specific reason to name different people.

• Health care proxy is a document in which you name a person, an agent, to make health care decisions if you cannot do so.

• Many people sign faith-based health care documents failing to realize that their existing secular documents may have conflicting appointments.

• A Health Insurance Portability and Accountability Act ("HIPAA") release is a legal document in which you authorize a person to communicate with physicians and access medical records. This is not, in contrast to the health proxy, a power to make medical decisions for you.

• Many states permit the appointment of a funeral agent to make funeral decisions. But caution is in order as the agent under many health care proxies is given those powers.

• Many states recognize a document called a Physician Order for Life Sustaining Treatment ("POLST") which addresses medical decisions if you are terminally ill.

• Say you created a revocable trust to manage assets during your disability and reduce probate costs. If you transferred your tangible assets (furniture, art collection, etc.) into the name of the trust the person named as trustee and then the successor trustee will have control over those assets. If you did not transfer those assets the person named as agent under your financial power of attorney may have control over those assets. Are they the same people?

It is important to coordinate the people named under the various documents to avoid conflicts.

It also gets a bit more complicated in that the agent under your financial power of attorney (and a revocable trust if you have one) will have the authority to pay for medical treatments and other health care related expenses. You probably do not want the person named with financial powers to try to control the decisions the person you empowered to handle medical matters for you. You might in the financial power (and revocable trust) mandate that the agent (or successor trustee) pay for the health care costs based on the decisions of your health care agent.

What about your safe deposit box? Who are the authorized signers on your safe deposit box? The bank application may have been completed decades ago and you may not even recall you authorized to have access to your box. Is your If a former spouse or partner, or former close friend (who you have not talked to in years) is listed as an authorized signer, what might happen? Perhaps a child who is now alienated from you might be listed. What might the consequences be? If the box is jointly titled, will the co-owner be entitled to claim ownership of the box's contents? Will important documents (such as list dispositions, or your last will) disappear when the authorized signer decides they'd do better if that document didn't exist?

Coordinating Insurance Coverage

Coordinating your insurance coverage with your estate plan could be really important. For example, one of the most common oversights is people frequently have no or inadequate liability coverage. If you are in a car accident or someone is injured on your front porch, you homeowners policy may only provide $500,000 or some other specified maximum of coverage. But if your net worth is $5 million you should have more coverage. If your coverage is too low a lawsuit could wipe out your assets. What about disability coverage that replaces earnings if you become incapacitated? Too often people have substantial life insurance coverage but very inadequate disability coverage. Many people simply do not appreciate the financial risks that a long- term illness or injury can create. So, if you have been on target with your retirement savings and monitor it quarterly, that is great. But a gap in liability or disability coverage could undermine all your careful investment and savings plans.

How should you coordinate to dovetail life, disability and long-term care coverage with an irrevocable trust plan? This is another critical issue that is often given inadequate coordination. Say you make large gifts to an irrevocable trust to benefit your spouse. The goal is to protect those assets from claims and use and safeguard your estate tax exemption before it is reduced by half in 2026. But if your spouse dies prematurely, you may have no further access to the wealth in the trust you created. That could undermine your financial security. One way to address that risk is for your spouse to buy life insurance on her life (often in another trust). In that way if your spouse dies prematurely, your financial risks will be mitigated by the life insurance coverage. Long-term care insurance might be another issue. Before you transferred significant wealth to irrevocable trusts you may not have felt a need to purchase long-term care coverage. But if you transfer a significant portion of your wealth to trusts perhaps you should revisit the peace of mind that long-term care coverage might now provide.

Life insurance can also be effectively used to benefit a particular heir, assure an inheritance for someone you feel obligated to protect, and at the same time, even simplify your planning. But coordinating your estate and insurance planning may be essential to accomplishing these goals.

• You have a special needs child. You determine that you want to provide a $1 million inheritance for the child so you create a life insurance trust with special needs distribution standards (so it doesn't jeopardize the child's qualification for governmental programs) to own a $1 million life insurance policy. The policy needs to be properly funded and perhaps should be a permanent type of coverage. This also simplifies the rest of your planning as you may simply bequeath the rest of your estate to your other heirs under your will.

You might determine to take the opposite approach to the above plan. You have a large IRA which your special needs child will qualify to stretch over her life expectancy even after the Secure Act created considerable restrictions on stretch IRAs (called that because the distributions from the plan can be stretched over life expectancy). So, you opt to bequeath your retirement assets to a special trust that will accumulate and protect plan benefits for the special needs heir. Your remaining assets which are not retirement assets, and a new life insurance policy, will fund your gifts to your other children.

• You are in a second or later marriage and you would like to provide for your children from a prior marriage and your new spouse. However, you feel it best that their interests be kept as separate as possible to avoid any disputes. So, you might buy a life insurance policy for your children and bequeath the rest of your estate to your new spouse, or vice versa.

• The key point is carefully evaluating insurance needs for all types of coverage, and coordinating it with your planning goals and other documents can be critical to accomplishing your goals. Also, as your needs change, that coverage should be revisited to be certain that it still accomplishes your goals.

Coordinating Your Plan And Documents With Religious, Personal Or Philosophical Wishes

There could be many different personal goals and objectives that you wish for your plan to meet. Those need to be coordinated. These may vary considerably from person to person, and may be somewhat unique to you. Thus, these are very important for you to explain to your advisers and to otherwise be certain that they are coordinated with your plan. Consider:

• You might have an important investment philosophy such as investments that avoid stocks that harm the climate and favor those that help promote climate friendly activities. That type of philosophy may have to be authorized expressly in all documents that deal with financial investment issues: power of attorney, revocable trust, irrevocable trust and your will. Also, it may be advisable to have your investment manager create an investment policy statement ("IPS") now and each year reflecting your wishes so that you create a record of what you want done from an investment perspective. If you write a letter of instruction to your heirs it may be important to explain your philosophy. Thus, your personal or philosophical goals can and perhaps should permeate all your planning and be coordinated to meet your wishes.

• Religious considerations could affect every legal document you have as part of your estate plan. If your attorney is not familiar with your beliefs and their impact, you may need to provide that information so that appropriate changes can be made.

• For many people, giving back to charities and causes that were important to them is a vital part of their plan. This is not only planning for death, but planning for life. For example, if you have tithed you need to coordinate that from several perspectives. Your financial planner must know of this goal so it can be factored into financial forecasts. That is critical to meeting your current charitable goal as well as keeping your retirement and other financial goals on target. If tithing is important to you, then your durable power of attorney and/or revocable trust should permit charitable giving and provide a measure of direction as to how that should be done. If that is not done, then your lifelong goal of tithing could be disrupted in the event of disability. If charitable giving is so important to you, any irrevocable trusts should consider charitable giving and perhaps should include charitable beneficiaries so your heirs can continue your legacy of philanthropy. You might purchase life insurance to fund a charitable bequest. You also may wish to coordinate beneficiary designations. If you are making a bequest on your death to charity there may be considerable income tax advantages to funding the charitable gift with retirement assets that have an inherent income tax cost when inherited by non-charitable individual heirs. In short, your charitable goals may need to be coordinated with ever aspect of your financial, estate, and other planning.

• If you have an heir that has an addiction issue coordination of how you provide for that heir and otherwise assist them is critical. These challenging personal issues are too often covered up which can prevent your advisers from telling you how to coordinate this planning. You might incorporate substance abuse provisions into trusts. If you have named an institutional trustee they may not be comfortable applying those provisions so that you may have to name an individual to serve in that capacity. Your attorney will have to be informed of these issues in order to draft your documents addressing those points. Your financial adviser may need to understand the financial implications of this or other personal challenges so that the costs can be integrated into financial forecasting. You might need to provide special instructions and powers in your financial power of attorney and/or revocable trust to assist such an heir.

Conclusion

Coordinating all aspects of your financial, estate, asset protection, and legal plan is really essential to your achieving your goals. Too often important coordination between different advisers, documents, assets, or other aspects of your planning is overlooked. This article has discussed various aspects of your planning that should be coordinated, explained why these matters are overlooked and has provided practical suggestions of how you and your advisers might address these issues. Also, for each topic examples of the benefits you might receive from better coordination have been provided. The key to this is diligence and follow up.

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