

Holistic Estate Planning

By Leigh Harter

Leigh Harter explains how the process of holistic estate planning can lead to superior results for wealth creators, their immediate families and future generations.

Merriam Webster defines “holistic” as “relating to or concerned with wholes or with complete systems rather than with the analysis of, treatment of, or dissection into parts <holistic medicine attempts to treat both the mind and the body> <holistic ecology views humans and the environment as a single system.>”

BusinessDictionary.com defines “holistic” as an all encompassing view based on the knowledge of the nature, functions, and properties of the components, their interactions, and their relationship to the whole.

Many attorneys try to consider long-term family goals and go beyond the boiler-plate documents that are provided by their software purveyor of choice or by the forms from their favorite Trust Department. In a past life, Northern Trust’s Will and Trust Forms “Book” seemed the undisputed standard. But, no advisor will be able to see all potential outcomes of a certain drafting style or choice of forms. However, looking at the family and business interests as a whole and trying to involve those individuals who wish to contribute, while maintaining a disciplined approach to the “committee” style of management, could create real synergy for the family. In “Blue Ocean Strategy,” W. Chan Kim and Renee Mauborgne work through many examples of unique approaches to business conundrums, each of which results in extraordinarily successful outcomes.¹ Perhaps a holistic approach to estate planning, where advisors can get the clients to buy-in to the additional expense required for a potentially exceptional outcome, could result in a “Blue Ocean” type of success. Nintendo’s Wii is the poster child for this approach; having heard of Mr.

Kim and Ms. Mauborgne’s concept, Nintendo approached them with the quandary of how they could reinvent videogaming from a new angle. Together they created the Wii.

Let us consider a non-tangential thought to toss in to the mix of holistic planning—Milton Friedman interpreted people’s private business very broadly². In that sense, families that would be subject to estate tax have a modicum of control over the government in how they manage the disposition and intent of their estates and also in how they indoctrinate their heirs in the management of those assets.

Holistic estate planning should create bridges between the generations so that the intent of the grantors and the planners will eventually mesh with the outcome the beneficiaries ultimately receive. Working through the process should create “meaningful human connections so the science of traditional planning fuses with the art of the families foundational principles.”³

Great art often requires preliminary plans, sketches, outlines and a lot of diligent effort in addition to the talent and creativity that will help build the work the artist envisions into the artwork finally accomplished. The planning required to create a great estate plan may not ultimately produce a breathtaking work of art. However, if effectively and thoughtfully done the planning effort can build long-term family unity and prevent heartbreaking inter-family rifts that a lack of planning could cause, or at the least, not prevent.

Talented estate planners will certainly say there is “artistry” in how they build a plan. In an interview with Susan Bart, she expressed the feeling that trustees should be given flexibility when the documents are drafted, for example “if the trustee sees any reason to hold back on distributions the trustee should be able to do so”⁴ for justifiable reasons. Justifiable

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reasons might include substance abuse problems or just immaturity. A common example would be a child with access to a Uniform Trust for Minors Account (UTMA) that took all the money out at age 18 and used it to live on rather than go to college and earn a degree that would provide the credentials to build a long-term career. Had better planning been done, this money would have been in trust with provisions that would limit lump-sum distributions. These, however, are just small pieces of a much larger planning puzzle.

Why Is Creating a Holistic Plan an Important Family Goal?

Start with the most extreme case: If estate planning is completely ignored, families of moderate net worth will have wasted their resources and essentially chosen the government as their charity. Even if an individual believes that his or her children have or will have “enough” then the appropriate planning should be done to place any assets that would otherwise be subject to estate or inheritance taxes in charitable entities (foundations, charitable remainder trusts, donor advised funds or other charitable alternatives). Doing so will protect the assets from federal and state taxation. Some taxes may have to be paid; however, careful planning may avoid a significant part of the tax bill.

The process of building an effective estate plan can also build or help insure long-term family harmony. “Attorneys report that the primary motivation behind most estate-planning inquiries is a strong personal desire to avoid anguish, disagreement, and disharmony in the family.”⁵ Paying attention to the various pieces of the plan and how they will ultimately interact and impact the heirs could be looked at metaphorically as a sort of chess game. Each “play” will change the course of the game for both players. In an estate plan, how each document is drafted and the amount of flexibility given to the administrators and trustees will impact how the plan functions long term. Involving family members will help to set long-term expectations. For example, if an individual plans to leave his or her whole estate to charity above some threshold amount, involving the heirs in charitable activities from childhood on may make this a more palatable end result.

It follows that putting together a cohesive plan for the future, and involving the family, provides a lesson for subsequent generations. Especially if family

members have been involved in the process or at the very least educated in why certain decisions were made. For example, it may make sense to have all the children act as co-trustees. If they have to work together to settle the trust estate they will cooperate with each other in order to move the distribution process along. They do not have to serve. “If a child does not wish to serve as Co-Trustee, he has the right to decline, withdraw or resign. Let the decision to serve be theirs rather than yours.”⁶ By the same token, however, it may make more sense to have a single trustee if the trust contains real estate or business interests. Having several individuals, some of whom may lack experience, attempting to manage the operations of a business or rental property will unnecessarily complicate matters and will probably impact the effective running of the business.

Creating the plan as a group, assuming that everyone will “check their guns at the door,” may also draw the family together and crystallize or define intergenerational goals the individual participants might never have been aware of had they not participated in the planning process. If the family can work out the details of the plan with each other, building the estate plan may join the family members together in a project that could bind them together for life. This effort to steward their resources could benefit both the family and (perhaps) charitable or inter-generational goals that individual family members may wish to promote. For example, if the testator or grantor decides to create a foundation, family members can become members of the foundation’s board. This way, they may not only learn the importance of philanthropy, but also decide where the foundation’s assets are invested and which organizations will benefit from the foundation’s gifts.⁷

In an interview with Karen Hagnell of Hamilton Thies Lorch & Hagnell LLP, she expressed the following point of view: “Younger family members will have a much better start, and ultimately will do better planning, if they can learn from the experiences of older family members and understand the context of estate planning decisions and family business decisions. Eventually the same decisions will be in their hands, and it will benefit everyone if they have the tools to address them. Their success may very well have an impact on all generations, including the older family members, as life expectancies continue to grow and roles will be reversed for decades in some cases. Moreover, older family members are

better able to engage in effective estate planning and run a successful family business if they incorporate the fresh ideas and different perspectives of younger family members. In my experience, parents who seek input from their adult children tend to make better decisions in the estate planning arena than those who do not, as do adult children who incorporate the experiences of their parents. Siblings who have had some joint involvement in the family's estate planning and family business over several years tend to have a better chance of handling the settlement of their parents' affairs amicably some day and successfully running the family business together."⁸

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How Can a Holistic Plan Be Established?

First there is the question of scale. The scope of the plan will be determined by the size of the estate and the underlying complexity of the business and investment interests. The scale will also dictate how broad the reach of the planning initiative should be. For advisors to build a "Blue Ocean" plan, either an inspired client or a large scale planning initiative dictated by significant assets or extraordinary complexity will be required. This does not deny the success that might be achieved by an individual or family having less resources and the willingness to provide creativity and inspirational horsepower to fuel a "Blue Ocean" type initiative for their overall plan.⁹

For the client, this process must start with a series of objectives, choosing advisors, and making lists. If the scale of the plan mandates a team of advisors the client will have to select the team. This may mean picking one advisor as the "Coach" or Quarterback" and allowing that advisor to choose the rest of the team (with both veto and power of appointment retained by the client). Alternatively, a selection process may be put in place where recommendations are reviewed, references checked, and votes taken within the family. In some instances one family member may make all of the selections, in others the group may prevail. The lists that need to be prepared could be considered the first step in the estate planning process. These are the lists of assets that will be subject to

the plan. Concurrent with assembling the team, many of these assets may require the valuation services of a professional. These could be closely held business interests or artwork and antiques. Accurately assessing the value of these assets will provide an anchor for the plan, since many of the decisions that must be made revolve around the accurate assessment of the total value of the estate. Predetermining asset values can help in equitably distributing those assets.

In a recent discussion with H. Randolph Williams, of Williams and

Baerson in Chicago, Randy made several interesting observations. First, he noted that the state of the economy is helping him get family members to agree on how to best preserve the estate. Apparently, with less money to go around the need to preserve it becomes more apparent. He also commented that giving too much, too soon to the heirs can be destructive, whether it is money, or the power to make decisions. It is his opinion that it helps to involve family members in the process; however, the individuals who are creating the documents (typically the older generation) should be the ones making final decisions on the structure of the plan.¹⁰

For the advisors, the planning process might start with interviews of the family members who will participate in the process in order to build a schematic of priorities and try to figure out how to best create a holistic plan that will stand the test of time. Theoretically, the plan should meet the objective of sustaining family harmony, which as noted above is the prime mover in most families that initiate the estate planning process. In a recent interview, Lauren Wolven of Horwood, Marcus & Berk, said that she looks at the long term perspective when drafting documents and tries to figure out the impact of planning on subsequent generations. "How can you provide an out for family members who are not involved in closely held business interests? The document can provide guidance, but should not be so tight that the family or the trustee has no flexibility to deal with changes that may be unforeseen occurring fifty years from now."¹¹ This is where the real art of estate planning plays a part, and where a team of creative advisors is invaluable.

The advisors. The list of advisors to fill the full compliment of a well rounded team might include the following:

- Family members to serve in roles defined by the family to which each is uniquely suited or willing to train themselves to fulfill the family's goals and objectives
- Estate planning attorney/team
- Insurance consultant
- CPA with experience in estate planning
- Investment professional
- Business psychologist
- Mediation expert
- Medical professionals or advisors as necessary where there is a "special need"

Subordinate roles might be filled by:

- appraisers;
- valuation experts;
- key employees of the family business who will be needed on an ad hoc basis; and
- additional players as needed, and agreed upon by the family and the other team members.

The long-term success of the team may rely on several factors:

- **Trusted relationships to the family or to other team members**
- **Willingness of team members to subordinate their egos for the goals of the family and the team**
- **The capacity of the family's "alpha" member to delegate responsibilities, share information with the team and allow team members to work with each other:** If the lines of communication are restricted, the process will become much more arduous, costly, and less effective. Lauren Wolven expressed the opinion that the long term success of a complicated estate planning process can be hindered by a "grantor" or controlling family member who cannot allow team members to freely communicate with each other because the grantor believes that open lines of communication might undermine his or her control of the planning process.¹²
- **Talent and back office strength of each team member:** The administrative staff that supports outstanding professionals should be considered when choosing team members, for if such professionals cannot build their own organization they may not be the right people to help create the optimum (if that is possible...) plan.

If the family has conflicts, family members should try to agree on the basics before documents are drafted. It should also be noted that power is not necessarily seated in the older generations; however, younger players will have to prove their

worth through hard work, diligence, creativity, and occasional strokes of brilliance. That is typically how the "founding fathers (or mothers)" built the business and is the type of contribution they can respect, honor, and reward. These are the building blocks that will allow the first generation (G-1) to accept other family members as peers, and listen to their opinions with an open mind. A spot on the "committee" typically is not given to family members, key employees, or advisors who have not worked hard, provided faithful service, and a full measure of value in exchange for the trust and fidelity of the decision makers.

The process of building consensus can also build long-term unity and create goals a majority of family members can agree on. Stewardship of family wealth must be nourished by building a multi-generational structure that encourages communication and has been created with participation by all family members who wish to be a part of the long-term plan. Those that do not want to participate in the process may not ultimately share in the wealth of knowledge or the "goods and chattels" that will be distributed. This "democracy" of participation must be effectively communicated at all levels if the family decides to enforce it, so that each individual understands the consequences that result from a lack of participation. By encouraging individual effort, the plan can provide the incentive for each family member to contribute to the productivity of the family business. This will help avoid the very unpleasant and omnipresent reality of dilution of wealth that will occur if the family business or businesses do not prosper.

As the family descends through generations, this dilution of wealth is a simple law of numbers unless each generation adds to the "pot" with their personal efforts on behalf of the family businesses, or via their own wealth creation. If a sense of stewardship and an understanding of the value of wealth as a tool to provide economic progress, charitable endeavors and long term family stability can be communicated from generation to generation, very successful transitions should be easily accomplished. Communication is the key to avoiding the disastrous results of dilution that long-term lack of productivity will "produce." Produce is placed in quotes because encouraging a sense of entitlement will stifle productivity, and dilution of assets downstream can often be the direct result. Can you imagine any intelligent person saying they wanted to raise a "trust fund baby"?

Can the “Founder” Truly Embrace the Team Concept and Give up Control?

Relinquishing control applies as much to working with the family as it does to working with a team of advisors. From the standpoint of planning for your family like it is a business, achieving some level of consensus will avoid unpleasant surprises for the heirs. In discussing the topic of holistic planning, the first thing Susan Bart stated was that it will “help to avoid surprises”¹³. In our increasingly litigious society, “surprises” will often result in contested documents. “Trust litigation can waste away trust assets in a terrible way.”¹⁴

Working with a competent team of advisors and keeping the family in the loop is part of the solution. Also, including mediation clauses can help keep the estate out of the court room. Understanding the potential consequences of “surprising” the heirs can be a strong incentive to encourage the founders to include their heirs in the planning process.

The team of advisors will need a leader who understands the importance of working together and communicating with the team and the family. It is crucial that this individual is a trusted advisor the first generation will listen to and the younger generation respects. Another time that “surprise is never a word you want to hear”¹⁵ is when the heirs are informed of the identity of their fiduciaries (trustees, executors, protectors, administrators, etc). Participatory planning should help avoid that element of surprise.

Joe Goodman of Adams and Reese LLP in Nashville, Tennessee, attended a Family Firm Institute (FFI.org) seminar over twenty years ago, and says that it completely changed his approach to estate planning. He will not begin drafting documents until he has had several family meetings. His first efforts are directed at overcoming the money taboos and secrets that the older generation (G-1) feels the need to protect. This is intertwined with getting past the “barriers of extended paternalism and asset control”¹⁶ that they feel protect the younger family members when it actually may prevent them from growing into their wealth with a mature understanding of how to manage it. Joe works with G-1 to change their approach to

planning and convince them of the benefits of being open, forthcoming and candid with the second and subsequent generations.

Generational differences often hinder the ability for G-1 to work with their heirs. Without advisors who understand what motivates the beneficiaries, planning can go awry. In light of the political and social climate of the beneficiaries, the grantors and their advisors need to be cognizant of what should motivate beneficiaries if they choose to include any type of incentive planning. However, by the same token, you can not draft the documents so tightly that you tie the hands of the trustee. A classic example of this type of planning would be income matching—that is, the trust will

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distribute to each beneficiary an amount equal to the amount that he or she earned that year. If one beneficiary is a teacher, one a banker and one a lawyer—how “fair” is it to income match between these three?¹⁷ Back to the chess game metaphor, a good team of advisors should be able to understand the family dynamics and anticipate the consequences of their trust provisions to help avoid inappropriate incentives and too much (or not enough!) power vested in the hands of the fiduciaries.

Drafting Documents the “Holistic” Way

Historically “Attorneys tend to think about taxes when drafting documents rather than focus on the needs of the client.”¹⁸ Now that it appears the unified credit may be permanently set at \$3.5M, allowing \$7M to be protected between husband and wife, planning for the typical estate can become much more oriented towards goals and objectives of the family, rather than targeted at preventing estate taxes.

In a recent discussion, Joe Goodman expressed the opinion that holistic planning may not change the documents as much as it will change the way you ultimately arrive at a finished estate plan. “Lawyers and estate planners need to be sensitive to sharing the golden goose between generations.”¹⁹ This is in contrast to the typical marital trust plan that would completely avoid taxes at the first death by taking advantage of the unlimited marital deduction, leaving an extraor-

dinarily rich widow with full power over the majority of family assets. A holistic plan would work through the generational conflicts so that a much larger cross section of family members could share in both the responsibility and the benefits of the family wealth. This includes planning for closely held business needs to help work through the generational transfer issues that typically arise there as well. In the planning process, Joe will build circle diagrams of family members, advisors and key members of the business team with the understanding that the interrelationships with these individuals will push around the elements of the plan. "A push in one direction causes a pull in another,"²⁰ and with each push or pull there will be change in the family dynamic that needs to be interpreted to work through appropriate changes in the plan.

There are, however, new additions to documents that can help create a more holistic plan. With a review of flexibility options, trustee powers, and family problems the documents can be created to better address issues that would have been ignored in the past. These issues might include autism, retardation, drug problems, or repeated, proven financial irresponsibility, among others. Some of the tools currently being used by estate planners are as follows:

- **Directed Trusts.** A directed trust takes advantage of the skills of specialized trustees to manage assets. "A directed trust is one under which the trustee has less than full managerial authority. This will be the case whenever somebody else, who is not a trustee, has the power to control particular actions of the trustee. ERISA contemplates three different kinds of directed trusts. A plan may call for the shift of authority over assets, to whatever extent is desired from the trustee, (a) to plan participants or beneficiaries in respect of the assets allocated to their own individual accounts, or (b) to a "named fiduciary who is not a trustee," or (c) to an investment manager."²¹
- **Mediation Clauses.** Mediation clauses allow for the use of mediation in estate and trust disputes. The use of mediation clauses in estate planning documents should significantly reduce litigation when the estate is being settled and/or while the trusts are established and being administered
- **Asset Protection Trusts.** These trusts are typically created to protect the trust assets from creditors of the beneficiaries. These trusts can also protect the assets from attachment by the spouse of a beneficiary should the trustee deem that distributions would be inappropriate if made to that beneficiary. Many asset protection trusts are now created "offshore"

(i.e. Cook Islands, Nevis, Cayman Islands, etc) to further enhance their creditor protection features. Many states now have laws that allow for asset protection trusts similar to the offshore models to be created within their jurisdiction, such as South Dakota, Alaska, Delaware, Nevada and others.

- **Special Needs Trusts.** These trusts are designed to protect beneficiaries with special needs. These needs could be as severe as autism, mental retardation, or a disabling health problem, or could be due to substance abuse or even a track record of long-term fiscal irresponsibility.
- **Special Trustees.** Special trustees are those that are in place with a special skill, for example, trustees to specifically manage the investment of trust assets, or a special trustee to manage insurance assets. Special trustees can free the individual trustee or trustees from the responsibility and liability for asset management imposed by the Uniform Prudent Investors ACT (UPIA) mandate. Theoretically, a special trustee will provide better management of those trust assets under their care because that is their specific area of expertise.
- **Separate Trustees with Unique Powers.** Individual trustees are given powers related to their own area of expertise, for the benefit of the trust beneficiaries. This is another way to encourage better outcomes for the trust through specialization.
- **Allocation of Fiduciary Duties Between Two or Three Trustees or Groups of Trustees.** Such an allocation of duties is based on areas of fiduciary expertise to protect the trustees and accommodate specialization.

In addition to these tools, Joe Goodman builds requirements in his documents that the fiduciaries educate themselves in the problems affecting the beneficiaries and/or hire experts to deal with those issues. This gives the fiduciaries the latitude to spend trust funds to appropriately address the serious issues that affect the beneficiaries of the trust or trusts.²²

Finding the Fit and Producing Documents That Achieve Consensus—Family Ergonomics

Unless the family has an extraordinary level of consensus, a number of meetings must be held to work through the goals and objectives of each family member and the family as a whole. If the family members all work or have scheduling conflicts, even scheduling these meetings may present a challenge.

Typically these processes are initiated by G-1 and the “founding fathers and mothers” will not want the planning process to go on *ad infinitum*. A sense of urgency must be communicated in order to bring the participants together in each meeting and achieve the ultimate goal of consensus in regard to the structure of the plan.

Alternatively, if the family members have trusted advisors they can assign the tasks to those advisors and then provide their individual input for documents that will be created for review by those advisors with the family’s initial goals as their objective. This is often the best solution, since it should expedite the planning process.

Incentive Provisions—Is There a Better Option?

Incentive provisions are a hot topic for advisors who are concerned about the long-term performance of the documents they are currently drafting. An estate planning attorney with an open mind and the best interests of the client at heart will do his or her best to work with the clients, their family and advisors to build a long-term flexible estate plan. When the attorney discusses incentive provisions with the client, an open conversation should follow. It might proceed like this:

Client: I don’t want those kids to get something for nothing—how can we draft these trusts to make sure they work for what they get?

Attorney: We have to be careful, since our language has to hold up for fifty or even a hundred years. Successor trustees that we do not even know may have to administer this trust.

Client: I worked hard for that money; those kids shouldn’t just be able to ask for it, I don’t think that would be good for them.

Attorney: Well, we can use open language and incentives that encourage all types of productivity rather than simple quotas or matching incentives. I lean towards providing for daycare payments for any activity outside the home.²³ For any couple, daycare payments will allow them to either work for income or volunteer as their conscience and income allow. Daycare support will also encourage the pursuit of education should either parent wish (and have the wherewithal) to pursue a degree or advanced degree. These types of secondary support do not inhibit productivity and personal growth. They actually encourage it since they are not direct sources of

revenue. Direct payments that are provided without commensurate service can suppress initiative in those individuals who are not motivated to work for the positive feedback provided in return for services rendered.

Client: What else could we do?

Attorney: If you are charitably inclined, we can establish a foundation, charitable remainder unitrust or lead trust, depending on your goals. If any of these entities is intended to continue for a long term, you could work with your children and grandchildren to educate them as stewards of these charitable endeavors. They could receive a modest salary for their work as well as the psychological rewards that any charitable endeavor brings.

Client: Maybe we should talk to the kids about this stuff...

Plan Documents

No estate plan can be implemented without the necessary documents. Here are the types of wills and trusts that are commonly used.

Wills. All individuals need a will. At the more complex levels this will typically act as a pass-through or pour-over document that will essentially hand over control of the assets in the estate to the various trusts that have been established to hold or distribute these assets.

Trusts. Trusts take a myriad of forms and can be very simple or extraordinarily complex. The best trusts will be both simple and flexible in order to allow for changes in state and federal tax law through time, as well as changes in the intent of the grantors and the needs and desires of the beneficiaries.

ILITs. ILIT is the acronym for Irrevocable Life Insurance Trust. An ILIT is a Trust specifically established to hold and fund life insurance policies. When properly drafted and funded, the proceeds of the life insurance policy or policies held in trust will be remitted to the beneficiaries without estate or income taxes due. Any assets that are bequeathed through an irrevocable trust will pass without estate taxes; moreover, the income tax leverage that life insurance provides is a unique feature among financial instruments. For example, any assets that are transferred at death will receive a step-up in basis; however, they will also be subject to estate taxes. Life insurance, if established or transferred into an irrevocable trust, will pass to the heirs free of both estate and income taxes. Contributions to

these trusts have to be managed; they can either reduce the lifetime exemption of the grantor or can fall within their annual gifting limits. In order to gain the advantage of the gift tax annual exclusion, “Crummey letters” should be used to notify the beneficiaries that they are eligible to elect to withdraw those gifts from the trusts.

QTIPs (Qualified Terminable Interest Property Trusts). Typically these are used in second marriage situations where the subsequent spouse’s access to funds is restricted. The access to funds is usually restricted to “HEMS,” or Health, Education, Maintenance and Support. Excess income is accumulated and principal is preserved for distribution to the direct beneficiaries (usually the children). Occasionally, if a spouse is extraordinarily incapable of handling financial responsibilities this might be an alternative in a first marriage situation.

QDTs (Qualified Domestic Trust). Aliens or non-U.S. citizens are subject to much more stringent estate tax laws. This is not a frivolous or arbitrary tax law; it is intended to prevent them from fleeing the United States with large sums of untaxed capital. These laws force non-citizens to retain their assets in the U.S. or pay the tax penalty. The assets in a QDT must remain within the United States. If the beneficiary elects to transfer their assets outside the U.S. they will be subject to a 45 percent tax rate.

GRATs (Grantor Retained Annuity Trust). These are complex trusts that allow grantors to gift assets and retain an annuity from those assets for a term certain. Depending on the anticipated growth rate of the assets placed in trust, this can be an extraordinarily efficient way to extract assets from an estate. The higher the anticipated appreciation rate, the better. This is a transfer “vehicle” that also works well for assets that can be discounted. For example, legitimate and accepted discounts can be made for lack of marketability in a closely held business interest, stock that is not publicly traded, or a minority interest in real estate or any “hard” asset.

QPRTs (Qualified Personal Residence Trust). At the current low interest rates this is not a favored transfer strategy; however, property values are also depressed. So, if this strategy is to be legitimately analyzed, all factors should be taken into account. In the long term, a property transferred in a QPRT can provide very flexible gifting options. Rent must be paid to the new owners once the property has changed hands providing an additional way to move assets down to subsequent generations.

So, What Does All This Mean?

Essentially, each testator and his or her family have almost infinite options. How best to deal with this surfeit of opportunity?

- Listen.
- Try to create flexible documents.
- Protect our clients and their families from themselves: in other words, advise for the long-term benefit, to empower the heirs rather than restrict them.
- Work to build inclusive solutions that will create family unity and provide roles for family members to benefit the long-term goals of the family and the trusts.²⁴
- Remember the chess game metaphor when drafting documents: each move changes the long-term consequences of the game.

Who is currently planning the “holistic way”? Many attorneys are trying harder to be more sensitive to the needs of their clients and their client’s families. Certainly, those attorneys interviewed for this article are making a clear effort to change the way they plan for the benefit of their clients. It will cost more initially to build this type of plan both in time (soft costs) and fees (hard costs). Having a team of advisors work together is going to be more expensive; however, the long term benefits to the families they work with are immeasurable. These benefits will show themselves in the internal dynamics of the family, as well as in how the individual family members will have learned to conduct themselves with a team of advisors and within the “family team.”

We have come full circle back to the question or definition of holistic estate planning. Where or how can we find the Blue Ocean Strategy within our own estate plan or, if we act as an advisor, in our client’s estate plan?

The Blue Ocean can be found in building an empathic relationship with our clients, their spouses, children and key employees. Within these relationships, and the warmth and congeniality we find there, will be all of the connections we need to create a plan that will benefit all of these people we have grown to care about. It will not be perfect because we are not “Deep Blue” and cannot see the chess moves exponentially removed from our strategy for today; but, it will be a plan that we have worked through with every impacted individual that wants to participate. Because we care, we will have made sure that each concerned participant had a voice if that individual wanted one, and that we have addressed each contingency we could see today, to the best of our ability as a team.

ENDNOTES

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- ⁴ Interview with Susan Bart, J.D., January 28, 2009.
- ⁵ Shotwell, Barbara and Greenway, Nancy Randolph, *PASS IT ON—A PRACTICAL APPROACH TO THE FEARS AND FACTS OF PLANNING YOUR ESTATE* (Hyperion: 2000), at 16.
- ⁶ Condon, Gerald M., Esq. and Condon, Jeffrey L., Esq., *BEYOND THE GRAVE—THE RIGHT WAY AND THE WRONG WAY OF LEAVING MONEY TO YOUR CHILDREN (AND OTHERS)* (Harper Business: 2001), at 37.
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- ⁸ Written notes provided as a supplement to 2/18/2009 Interview with Karen Hagnell, J.D., 2/22/2009.
- ⁹ *Supra* note 1.
- ¹⁰ Interview with H. Randolph Williams, J.D., 2/23/2009.
- ¹¹ Interview with Lauren Wolven, J.D., 2/5/2009.
- ¹² *Supra* note 8.
- ¹³ *Supra* note 4.
- ¹⁴ *Supra* note 11.
- ¹⁵ *Supra* note 11.
- ¹⁶ Interview with Joe Goodman, J.D., CPA 2/27/2009.
- ¹⁷ *Supra* note 11.
- ¹⁸ Interview with Barry Siegal, J.D., 2/25/09.
- ¹⁹ *Supra* note 16.
- ²⁰ *Supra* note 16.
- ²¹ Available online at www.russell.com/us/glossary/pensions/directed_trust.htm.
- ²² *Supra* note 16.
- ²³ *Supra* note 3.
- ²⁴ Interview with Karen Hagnell, J.D., 2/18/09.

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