A legacy plan that fulfills your vision

There's more to legacy planning than simply putting a will in place. When done right, legacy planning is a long-term, multipronged project that involves determining the optimal ownership of assets during a person's lifetime, minimizing taxes, funding charitable gifts, educating descendants, and planning for the management of wealth after death. And it all starts with an understanding of your family's particular needs and goals.

To learn what goes into turning a legacy vision into an actionable plan, Crain's Custom turned to Goulston & Storrs, a law firm with expertise in managing large and complex estates. We spoke with Andy Rothstein and Michelle Porter, Co-Chairs of Goulston & Storrs's Private Client & Trust Group.

Q *Crain's:* Should individuals make gifts to family members now, or wait until death? What if things change?

A ***Rothstein:*** From an estate and gift tax perspective, it's generally advantageous to give assets during one's lifetime rather than waiting until death. That's because the way the gift and estate tax system works, any appreciation that occurs after the date of the gift will not be subject to estate tax when the giver dies. For example, if an individual gives away an asset that is worth $100 and dies at a later time when the asset is worth $1,000 in the recipient's hands, there would be no estate tax on the $900 of appreciation.

Andrew D. Rothstein
Director, Goulston & Storrs

Michelle M. Porter
Director, Goulston & Storrs

However, fluctuating tax laws suggest that a gift that appears advantageous taxwise today might not be in the future. In addition to the possibility of tax law changes, changed circumstances for the giver or the beneficiaries could cause a giver to question a previous gift decision.

To address the possibility of changes in tax laws or circumstances, we work with clients to build flexibility into their plans to be responsive to the changes. One way we do this is by utilizing trusts to receive gifts, rather than giving gifts outright to individuals. These days, an appropriately structured trust can lock in the benefits of lifetime gifts and adjust to changes that occur over time.

Q *Crain's:* How can a wealthy family ensure that their children achieve their potential?

A ***Porter:*** We are often asked the question, "How much is enough for our children?" or, "Is it possible to give our children too much?" The answer to these questions will be unique to each family in the context of their value system. That being said, a good legacy plan can create structures that can provide guidance to the younger generation and help encourage them to realize their potential. A legacy plan can also identify important trustees and advisers to help the younger generation manage and protect their inherited wealth.

Q *Crain's:* Is tax planning still part of estate planning?

A ***Rothstein:*** Tax planning still plays an important role when wealth is being transferred as part of an estate plan. The federal estate and gift tax exemption was essentially doubled to $11,180,000 per person beginning January 1, 2018. Under the current law, that exemption is expected to be roughly cut in half at the end of 2025. There may be an opportunity for some individuals to take planning steps to ensure they capture the benefit of the current exemption.

New York's estate tax exemption is currently $5,250,000. But that exemption is quickly phased out for larger estates. Individuals can take steps to minimize the impact of the phaseout. In addition, New York does not have a gift tax, so lifetime wealth transfers might be a way to minimize the impact of New York estate tax.

Income tax planning remains an important part of estate planning. There are a variety of income tax planning strategies that can be employed to make wealth transfers more effective taxwise. In some circumstances, those strategies have become easier to implement because of increased estate tax exemption amounts.

Q *Crain's:* Beyond the tax benefits, what role should charity play in an estate plan?

A ***Porter:*** As most people know, there are compelling tax reasons to make charitable gifts. Specifically, subject to certain limitations, gifts to charity, either during one's lifetime or at death, will be deductible for tax purposes. That being said, there are also compelling non-tax reasons to consider charitable giving as a component of a legacy plan. There are structures, like a private foundation or donor advised fund, that enable family members to come together to identify charitable objectives. It's more than just leaving a bequest to charity; it's about creating a charitable mission that the family can develop and seek to achieve together.

Also, in circumstances where there is not a readily identifiable or acceptable family beneficiary, charitable donations can help a person achieve their legacy vision.

Q *Crain's:* Trusts are often part of any estate plan but sometimes have a negative connotation. How can you best structure a trust for success?

A ***Rothstein:*** Sometimes people view receiving a gift or inheritance in trust as having "strings attached" that are meant to keep a beneficiary from enjoying the trust assets. While attaching strings could be appropriate in some circumstances, oftentimes a trust can be used to provide advantages to a beneficiary—a trust can provide for professional management of assets, creditor (or divorce) protection and, to a certain extent, tax savings. In those circumstances, it's possible to retain these advantages while lessening the feeling of there being "strings attached."

This goal can be achieved by including elements in a trust that empower the beneficiaries by incentivizing their participation (for example, through the right to serve as a co-trustee and authority to change trustees) and allow the trustees to be generous (for example, by giving trustees broad authority to liberally distribute funds to the primary trust beneficiary, even to the exclusion of other beneficiaries). Similarly, documenting the wish that the trust provide an advantage to the beneficiaries (rather than strings) could help guide the trustees in exercising their authority in a way that might be more comfortable for the beneficiaries.

Q *Crain's:* What considerations should be given when selecting a trustee?

A ***Porter:*** An important part of a successful legacy plan is identifying the right trustee of any trusts created under the plan. You will want to select someone who has both fiduciary knowledge and experience serving as trustee—someone who will understand the legal requirements of being a trustee, understand the terms of the trust and ensure that the objectives of the trust are accomplished. A trustee should bring a level of expertise and professionalism to the management and investment of the trust assets. The trustee should also provide regular information to the beneficiary and be open to dialogue regarding the beneficiary's needs and expectations. In the best arrangements, there is regular communication between the trustee and beneficiary, and a clear understanding of the terms and purpose of the trust.

Q *Crain's:* What's the best way to make sure my wishes are carried out after my death?

A ***Porter:*** It is important to meet with an attorney every few years to review your estate plan to ensure that all documents are up to date and account for both life changes and developments in the law.

If specific concerns arise about particular assets or potential post-death challenges to an estate plan, consider meeting with an estate planning lawyer as well as a probate litigator. Doing so will allow your team to take proactive steps to resolve issues before death or to reduce the likelihood of post-death complications or disputes.

Another important step is to carefully consider whom to nominate to serve as fiduciaries (including trustees and/or executors). Although family members may be able to serve in these roles, professional fiduciaries may be best suited to fulfill final wishes in complex or contentious situations. ■