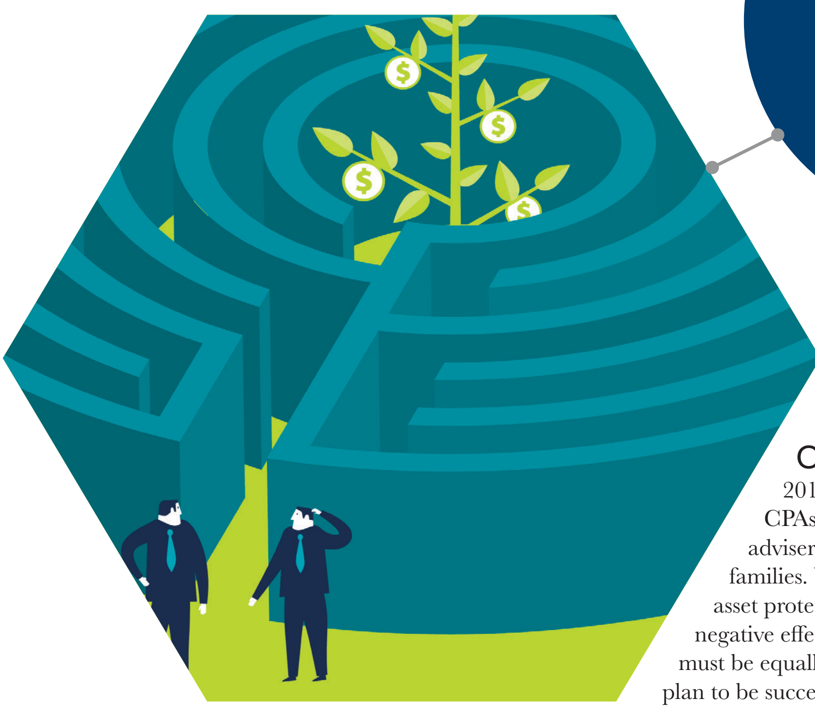
CPAs & Estate Planning

By David Claflin, Esq. & Michael B. Allmon, CPA, MBT

Should the CPA Be Involved—and if so, *How?*



Our previous article (*California CPA*, November 2017) pointed out the unique opportunities that exist for CPAs to actively participate—with the attorney and other advisers—in the estate planning process for selected client families. We emphasized that both *quantitative* (tax avoidance, asset protection, etc.) and *quantitative* (avoiding the unintended negative effects of inherited wealth on future generations) aspects must be equally considered for a multi-generational wealth transfer plan to be successful. CPAs are well-positioned to contribute on both sides of the equation.

This article highlights the continuum of points in the estate planning process where the CPA's unique perspectives and skill set will support clients in pursuing their estate planning goals.

Let's begin by recognizing that the estate planning horizon may cover decades—grandchildren, great grandchildren and beyond. The planning process must envision the multitude of issues that may arise and allow the mechanisms for solutions to be implemented as needed.

For brevity, we're going to look only at testamentary (clients with wills or revocable trusts) estate planning and a traditional married couple.

In many cases the CPA is the client family's most trusted professional adviser. If that statement rings true, you have the license to encourage them to move forward with the estate planning process at an early stage.

While Clients Are Alive

The crucial time when the "architectural" decisions that can enable or thwart the plan's success should be made is while both clients are alive and healthy (i.e., before the estate plan is activated by the death of a client). CPA participation at this point may be essential in several respects.

Helping Select The Team Of Professionals That Will Assist The Client Through The Planning And Into The Implementation Phases

This involves helping to locate an attorney whose competences—and personality—match the family's needs. The financial adviser also should be involved at this point to the extent possible (estate liquidity at this point may provide constraints, as it's difficult to use a financial adviser for an estate with little liquidity to invest).

Selecting the appropriate trustees and trust protectors (or the means for selecting them in the future) is another crucial issue. Together, these professionals will form a network of professional and personal support for the client family when the need to turn over control from the client arises. To be prepared for the time of need, this team must already be in place and comfortably performing services during the lifetime of the clients.

Over time, it's important to provide for succession of the various advisers, as they may cease to serve for various reasons. This is one reason to periodically review estate plans.

Facilitating Relationships Among Family Members Who Will Be Affected By The Estate Plan

This may be a task best delegated to a professional who's qualified to provide this assistance. But however this task is sourced, adult family members affected by the estate plan must be aware of its provisions and of the professionals who will be in place when death or serious mental incapacity occurs.

The participation of the CPA and other team members in family meetings and decisions during the clients' lifetime is crucial to long-term success of the estate plan. A family that has good relationships within it and with the professionals serving it may be expected to continue those relationships after death of a parent.

Participating In Designing And Drafting Estate Planning Documents

In many cases the CPA is the client family's most trusted professional adviser. And for your client families where that statement rings true, you have the license to encourage them to move forward with the estate planning process at an early stage. The client family benefits by your early assertion of appropriate encouragement to move this process forward.

First Spouse's Death

When the first spouse dies, his or her interest in property is subject to "post-mortem administration," either:

- In probate court, if there is no estate plan or living trusts that are not properly "funded;" or
- Through a revocable living trust, which becomes at least partially irrevocable upon death (other assets, such as pension plans and life insurance, may pass by beneficiary designation outside of either probate or trust administration).

At this point the CPA automatically becomes involved by virtue of the need for state and federal income tax preparation for the year of death and for the ongoing entities created in the estate plan.

In addition, estate tax returns (federal and, in some states other than California, state) may be required to take advantage of various elections or because the size of the estate requires one.

Beyond taxes, the CPA's long-term relationship with family members may enable his or her services to expand to domains that otherwise might be neglected.

The list of possibilities for CPA services where there exists a long-term participation in estate planning varies greatly from case to case. But the advantages to a bereaved family of a long-term CPA relationship in an estate plan that takes CPA participation into account will facilitate several obvious domains:

- Assisting with family business interests as affected by decedent's death;
- Assisting with administration of deceased spouse's estate;
- Facilitating surviving spouse's relationship with decedent's surviving children (crucial in blended family situations);
- Participating in decisions to make distributions from decedent's trust to surviving spouse or other family members;
- Working with financial adviser(s) to coordinate surviving spouse's financial affairs with the decedent's estate or trust;
- If surviving spouse enters into subsequent marital-type relationship, working with advisors and family to mitigate negative consequences; and
- If surviving spouse becomes incapacitated, same as above.

The CPA's success in assisting with these tasks is greatly enhanced if the estate plan was designed and drafted to utilize the family's relationship with its CPA in the most effective manner for that particular situation.

Surviving Spouse's Death

When the surviving spouse dies, the final phase of the wealth transfer from the first generation will be completed. The CPA's planned participation at this phase will be a benefit to children and grandchildren. Many of the tasks from the first death must be repeated at the second death.

In addition, the ongoing trusts for children and future generations will be finally funded, as there may or may not have been a partial funding at the first death.

Deciding on the Appropriate Level of Participation

Many families will appreciate the service of an independent professional who's willing to participate with the family and its business or financial interests in wealth transition planning.

Too often families are led to believe that the choices for trustee, executor and trust protectors are binary: either a family member or a bank. However, some families may appreciate expanding the possibilities to include a trusted family CPA. It should be noted that in California, the option exists to use a state licensed independent trustee. CPAs are generally exempt from the requirement to be licensed as a fiduciary in California.

Conclusion

CPAs interested in occupying formal positions in client family's estate planning should carefully evaluate the financial and personal dynamics of each situation.

If you wish to serve in a formal capacity, you should check with your personal counsel to ensure that you can do so under applicable state law and the terms of your professional liability insurance coverage. You also should consider including provisions for your compensation, if appropriate.

If you decide against a formal position in the estate plan, you may nevertheless provide service as CPA-adviser to the trustees, executors and beneficiaries. Where clients have access to good choices to fill the formal roles, the CPA may function more efficiently as an informal adviser to family members in evaluating the performance of those holding formal roles.

Or, the CPA could provide coaching and evaluation to family members who are placed in formal roles.

In either case the decision as to your level of participation should be made well before the client's death and be incorporated into the estate planning documents.

David Claflin, Esq., is board certified in estate planning and probate law by the Texas Board of Legal Specialization and is Of Counsel to The Blum Firm. You can reach him at dclaflin@theblumfirm.com.
Michael B. Allmon, CPA, MBT is a partner at Michael B. Allmon & Associates, LLP CPAs, and is the founding chair of the CalCPA Estate Planning Committee. You can reach him at mike@mbacpas.com.