

Retirement Weekly

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Searching for and selecting an estate planning attorney

Expertise and integrity head list of essential criteria

by Bruce Fraser

The drama over New York socialite Brooke Astor's estate hopefully is the exception that proves the rule. Even with most likely top-of-the-line estate planning advice, there were problems with her estate. But for most seniors, good estate planning advice would ensure such dramas don't occur.

In this litigious era, there's reason aplenty for having a formal process in place for selecting an estate planning attorney and not leaving it, say, to a chance meeting of someone at lunch or a seminar who seems to fit the bill.

Having such a process to call upon is especially important for seniors with significant and perhaps complicated estates. To begin with, it's important to know precisely under what circumstances it would be advisable to engage an estate planning attorney. According to Scott Meyer, a partner at law firm Montgomery, McCracken, Walker & Rhoads, the most common reasons an estate planning attorney might be necessary are:

- If significant death taxes might be due, either now or in the future, such as upon the death of a surviving spouse.
- If a beneficiary has special needs, such as incapacity, Medicaid eligibility, an inability to manage money, large debts or a rocky marriage.
- If the beneficiaries are likely to disagree over important issues, especially if there are children of different marriages.
- If there are children of a previous marriage and a subsequent spouse is likely to survive.
- If there is no relative available to manage the assets of an elderly person.

An essential part of the process is selecting someone with the prerequisite expertise and with whom you are comfortable. Different estate planning attorneys gravitate to different areas of specialization within the estate and tax arena. "While nearly all estate planning attorneys will have a general level of expertise on death tax matters, as the complexity of the potential issues increase, the more important it will be to engage an attorney who has specific experience with the techniques that may be needed for a particular client," Meyer points

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out. An attorney who invests the time to keep abreast of the latest IRS rulings, on the other hand, will often have at best a general familiarity with the significant complexities of Medicaid and related health-care law. Some attorneys have considerable skills in listening to persons and helping them to clarify a client's values. "If the client is wrestling with a difficult set of family issues, such an attorney would be much more useful than an attorney who knew the tax code and the Medicaid regulations backwards and forwards," Meyer says.

Given the pros and cons, what traits should you look for in selecting an estate planning attorney? Here's a checklist of criteria, which, incidentally, you can use as a template to select any outside professional:

Competence and expertise: Ideally, you want someone who has the expertise you can rely upon and who will take care of your clients in a competent manner.

"Look for an attorney where at least 50% of their annual revenue is generated by providing estate planning services. Follow the money; it is a sure sign of learning what business and expertise the attorney possess. Additionally, consider attorneys who have joined estate planning committees, networks or councils. This shows a commitment to staying on top of their game," advises Mark LaSpisa, a financial planner who is managing adviser of Vermillion Financial Advisors.

Aaron Skloff, CEO of Skloff Financial Group, says, "A lot of attorneys are competent in creating the legal documents, yet are not as focused on all of the tax implications. Specifically, the tax

ramifications differ from one state to another." As an example, he points out that the state of New Jersey has an estate tax exemption significantly lower than the federal estate tax exemption. "This could leave a New Jersey estate subject to two estate taxes, at both the federal and state levels," Skloff notes. More critically, a taxpayer may incorrectly fail to file a New Jersey estate tax return, relying on the federal estate tax exemption of \$2 million, when the New Jersey exemption is only \$675,000. A similar problem exists in other states and is known as "decoupling," Meyer points out.

Competence and experience are also high on financial planner David Bize III's

Resources

Finding an attorney

The best selection method for choosing an estate planning attorney is a referral or word of mouth.

Other resources include

- the Martindale-Hubbell database, which lists lawyers by location and specialization (<http://www.martindale.com>).
- FindLaw (<http://www.findlaw.com>)
- American Academy of Estate Planning Attorneys (<http://www.aeapa.com>)
- National Network of Estate Planning Attorneys (<http://www.nnepa.com>)
- American College of Trust and Estate Counsel (<http://www.actec.org>) Both have directories allowing advisers to search for a local attorney.

Books

"*A Guide to Elder Planning*," by Steve Weisman

"*Estate Planning for Dummies*," by N. Brian Caverly

"*Wants, Wishes, And Wills*," by Wynne Witman

"*Plan Your Estate*," by Denis Clifford

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shopping list. "The attorney must have prepared estate planning documents for many persons with the same needs as my client," says Bize. "If asked specifically and directly, most attorneys will tell you for how many people they have prepared a certain type of document."

To be sure, your estate attorney may not be knowledgeable in all the financial tools available to protect and enhance your estate. Specifically, Skloff points out Section 529 of the Internal Revenue Code. "While most people recognize the 529 for its primary purpose as a tax-advantaged college savings vehicle," notes Skloff, "it also provides estate planning benefits. Many estate attorneys have yet to recognize the latter merits of the 529 tax advantaged college savings plans."

A collaborative effort: You should ask your attorney candidate whether they would be willing to consult with your financial planner to review all aspects of your wealth and estate.

Ideally, you want the relationship between you, your financial planner, and the estate planning attorney, to be a collaborative effort.

"I believe this is critical," says Skloff. "If you are not provided clear answers, move on to the next candidate."

As your finances become more sophisticated, incorporating your financial planner into meetings with your estate attorney reduces the likelihood you'll overlook key aspects of your estate plan. "Unfortunately, an unscrupulous estate attorney may take advantage of seniors," says Skloff.

To protect yourself, notify the estate attorney that you'll be accompanied with a trusted family member. In doing so, you now have a second set of eyes and ears and a witness to any potential unethical actions.

Excellent follow up: In considering an attorney candidate, take note of how responsive they are to your telephone calls and emails. If the response time is too great in the initial selection phase, it is a good indication that the response time could be poor when there is a timely need.

Consider removing attorneys from your recommendation list if they don't return telephone calls or answer emails within a reasonable time.

No conflict of interest: It almost goes without saying that integrity should be an integral characteristic of any attorney you choose.

You should verify that your attorney does not directly provide insurance and other financial solutions as this would create a conflict of interest. Imagine an estate attorney who is a licensed insurance agent and recommends an excessive amount of life insurance regardless of your needs. **RW**

About the author: Bruce Fraser, a financial writer in New York City, has contributed to the Christian Science Monitor, CNBC.COM, FORBES.COM, The New York Times, Wealth Manager, Financial Advisor, and many other prominent business publications. He is writing a book about millionaires. He can be reached at frasernyc@aol.com. Visit him at www.bwfraser.com/home.