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C O U N S E L L O R S A T L A W

The Art of the Estate Plan

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So, is estate planning an art or a science? The Wall Street Journal finds today that "Estate Planning: It's an Art, Not a Science". The article posits:

"It is logical that an estate plan should offer a clear map of what a person owns, but this isn't always the case. Sometimes that person doesn't have an accurate balance sheet to start with, and chooses not to update it or to share every detail. Bad communication between attorneys and advisers may also create trouble."

While I grant that all these things may be true, the article seems to miss the point that the creation of the estate plan is based on a snapshot in time. Although the estate attorney will certainly discuss possible future events, nobody has a crystal ball, so it is impossible to know exactly what assets a person will have at the moment in time when they die, or even what the laws will be that affect those assets.

One other troubling point that I find is that the article seems to imply that there *should* be assets left when person dies. Many an estate planning attorney will tell you that the best estate plan is to spend all your money before you die; the problem of course being that we don't know exactly when that date is. Often times the client may have more wealth when they created an estate plan than they have when the plan is actually carried out. This is particularly true these days given the Great Recession. Remember that these are the person's assets to use as they see fit, desire, or need to until the point in time when they pass away; *there is no right of inheritance*.

So what must the most artfully designed estate plan contain? Two things: flexibility and clarity. One reason for working with an attorney to create an estate plan is to make sure that you've explored questions about the possible future so this flexibility can be built into your plan. What if you have less money? What if you have more? What if your children are 25 versus 35 versus 55? All of these things need to be considered. A fair point made in the article is that many times the client doesn't understand their estate plan, *even though they sign the documents*. While the actual documents themselves may contain "legalese" or significant and sometimes convoluted tax provisions, there is no reason why the attorney should not clearly communicate the structure of the estate plan to the client. Our office prepares both a summary letter and a flowchart summarizing exactly what each client's estate plan contains. Many times I find that it's the flowchart that the client refers to year after year as we review their estate plan to make sure their wishes are still being carried out.

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