

The SWOK Legacy

By Barbara H. Cane

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"They don't really pay enough attention to us," says Dr. Jones, one of my favorite clients and a dear friend. The "us" he is talking about is not other 94-year-olds, but single people without children. He's right! Think about all the ads showing young families with babies to educate and protect, silver-haired couples striding hand-in-hand along the beach toward retirement togetherness, or prosperous grandparents surrounded by cute grandchildren who will carry on the family name.

The media is rightly paying attention to the needs of same-sex couples and nontraditional families who want to care for one another in perpetuity. But what about the "true" singles—singles without kids? Nobody is paying attention to them, but you should.

First of all, there are more never-married, divorced and widowed people than you might think. They have assets—perhaps sizable estates, which you may have helped them build. But without active planning, those assets will end up in hands your client would not have chosen, or might even find downright unpalatable.

Estate administration for a SWOK is almost always messy and slow (i.e., expensive). The gift and estate tax laws are not generous, and without a spouse or progeny as heirs, biology provides no antidote to mortality. SWOKs must face the most difficult questions in estate planning: What legacy do I want to leave? What evidence will there be that I made a difference on this earth?

As a financial advisor, you are in the perfect position to give your single clients the attention they deserve, thereby distinguishing your professional services from the crowd's. These are the key points you need to explore.

Who controls where the assets go? If Marilyn, a SWOK, dies without making a plan, the state provides the plan. Chances are that she will be upset when you point out that without active intervention, she will have no control over where her hard-earned assets go when she dies. The idea that people she doesn't know could inherit her wealth (such as a distant cousin) is bad enough, but the known could be worse. Marilyn could be horrified to learn that, given her family tree and the laws of her state, everything would go to her half-sister, the child her dad had with his new trophy wife.

Sometimes a default inheritance has worse consequences than offended sensibilities—like, say, your uncle George's estate going to a mentally ill cousin, making her too rich for Medicaid and disrupting her fragile support systems. Of course, the alternative is for your SWOK client to think about whom to benefit. Peter, for example, decided to give something to his brother and nieces, and also make a big gift to the educational television station that has enriched his life. This couldn't have happened without active planning.

Making a will helps—but not enough. It's the first step to taking control, but it doesn't eliminate the court process known as probate. Probate can be especially cumbersome for a SWOK. Consider Isaac, a widower with no kids who made a will to benefit certain friends and charities. The executor had to submit the will to probate court for approval. State law required that everyone who would have inherited, had there been no will, had to receive notice of the proceedings—and give consent. Since Isaac was a Holocaust survivor with no immediate family, distant family members scattered throughout the U.S. and Canada had to be found, notified and asked to waive their rights to contest the will.

The court demanded a family tree and proof of the nonexistence of family members who had perished in Europe decades ago. The court named a "guardian ad litem" to represent "unknown heirs" and held hearings to examine the witnesses to the will—all this when there was not even a controversy! Years of delay followed, during which nobody enjoyed one penny of Isaac's intended gifts.

Think of other complex family histories in the context of probate notice requirements: Relatives may divorce, remarry, change names, adopt, have children out of wedlock, go to prison, move to Tahiti and so on. Now add the greed that may be triggered when a potential heir gets an engraved invitation to the "probate party" to determine who gets your client's money.

A Big Briefcase

Inform your SWOK about a better option: the revocable living trust. Here's how it works: Sam (the "grantor") creates a contract with a trustee, who takes legal title to assets and holds them for the beneficiary. In most cases, Sam will wear all three hats—grantor, trustee and beneficiary—as long as he is alive and well. During his lifetime, Sam will transfer as many of his assets to the revocable living trust as he can, preferably everything except retirement accounts—such as his home, investment accounts, bank accounts, tangible personal property, shares of the business, even "exotics" like boats, airplanes, art and race horses.

The trust is like a big briefcase with handles. While he can, Sam carries it around, controls it and, whenever he wants, trades it in for a snappier version by amending the trust. If Sam becomes incompetent or simply doesn't want to deal with business details, the successor trustee of his choice grabs the handles. When Sam dies, the successor trustee picks up the handles, reviews the document, and carries out Sam's wishes in a matter of weeks or months, not years, without the need for court proceedings.

But just like seat belts and contraception, revocable living trusts only work if you use them properly. You're in a perfect position to help your SWOK client "fund the trust." You will win gratitude—and maybe more business—when your client consolidates assets in the trust's

name. Critics point out that if not everything makes it into the trust, a "pour-over will" has to be probated in order to pick up the pieces that were left out. True, but if the financial advisor helps, most assets can make it to the trust, at the very least narrowing the scope of probate. If Sam gets everything but his car into his trust, his cousins, who are entitled to legal notice, won't be so interested in challenging his estate when they learn that his car is the only asset under discussion.

A word of caution: It's hard for a SWOK to pick a successor trustee for the simple reason that there is no spouse or child to do the job. Lawyers, accountants, family members and friends can all be good choices. The trust department of your investment firm might be appropriate too, but resist the impulse to suggest yourself for the job! You may have a conflict of interest, real or potential. It may be against your company's rules, and, certainly, it will not sit well with disappointed prospective heirs. Also encourage your client to talk to his counsel about powers of attorney, healthcare proxies and living wills; respect boundaries, and don't volunteer for those jobs either.

Orphan assets—another chance to help. Retirement plans, annuities and life insurance are common assets that pass by beneficiary designation. They can be very valuable, but because it's easy to fill in the beneficiary designation form, it is easy to make big mistakes. Some very bad choices suggested by personnel at the local bank include: "my estate" (triggering unnecessary income taxes and probate), "my little niece Sophie" (requiring court appointment of a guardian for a minor), and "young Freddy" (unwittingly bankrolling the teen's passions for sex, drugs and rock 'n' roll). Your client may not even know who the beneficiary is, or doesn't remember correctly. Our client, Judy, insisted her sister was the beneficiary of her IRA. We asked her to humor us and check: It was a man she had broken up with 15 years earlier! Help your client verify and review.

Aunt's Grants

Estate taxes are important, but there are bigger issues. As advocates for same-sex marriage have made very clear, married people get breaks on estate and gift taxes: the "marital exemption" (which allows estate tax to be postponed until the death of the second spouse), the unlimited gift exclusion between spouses (which allows asset shifting for tax reduction), "consent gifts" (which lets a spouse double the annual exclusion amount) and two unified exemption amounts for the family unit. SWOKs don't get these deals.

Explore how they can reduce estate taxes. (Of course, you should consult an accountant about any tax implications raised in this story.) Once their own needs are met, remind them that they can reduce their estates during their lifetimes by making cash gifts of \$12,000 every year to anybody, not just spouses and kids. They can also pay any amount for education or medical expenses, as long as it goes directly to the third-party provider.

Mix and match these ideas, like Cathy, a successful executive who has established a program of "Aunt's Grants." Her direct gifts and tuition payments make it possible for the children of her less well-off siblings to enjoy piano lessons, summer camp, a pretty prom dress or a trip to Europe. Don pays for mom's healthcare insurance and treats her to theater lunches with her friends. Ida helped a girl from a poor and chaotic home escape to boarding school and a

brighter future. Larry makes sure his sister, a single mom, doesn't have to worry about college tuition because (with your help) he set up 529 plans for her kids.

Besides generosity with family, friends, and the kids next door, charitable gifts are great for the SWOK. Dr. Jones's extended family will get generous gifts within the amount that can pass free of any estate taxes, but a series of creative lifetime outright and "split" charitable gifts will be his unique legacy. Since his beloved daughter died, and he will not leave a biological child or grandchildren behind, he will support lots of kids—students at his medical school, children who will see an art museum, kids who will enjoy a story hour at the library his "seed" gift started and young people who will become first-rate teachers because he created scholarships, are all part of his plan.

How did he do it? His summer home went into a charitable remainder trust, which gave him an income tax break when he set it up, pays him income for life and someday will fund projects close to his heart. A series of charitable gift annuities (paying 11.3% at his age!) also do the same. In fact, because he doesn't use all of the income from his charitable split gifts, he has the pleasure of giving some of the money away now and seeing new projects take shape. If he needs nursing home care some day, his income stream can cover it.

Helping a client make charitable gifts doesn't always mean that you lose investment dollars. Many gifts may take place only at death, and with sophisticated arrangements like charitable remainder trusts or lead trusts, you may still be the one giving investment advice. Dorothy, who made millions as an art dealer, named a charitable remainder trust as the beneficiary of her IRA. When she dies, the trust will pay income to individuals she loves for 20 years.

After that, the money will go to support art education for kids. Her trustee will keep the funds invested with the advisor who opened her eyes to this creative idea, so he will have part of the account for years longer than might have been the case without the charitable component. Mark showed his single 71-year-old client, Alan, how to make charitable gifts from his IRA under the special rules applying in 2007. By helping Alan give more to charity, and reduce his income taxes, there were more funds left to invest.

Alert your single clients to the special challenges of their situation. Help them find solutions to the legal, administrative and tax challenges of their estate plans. But never forget that the SWOK, even more than those who will be survived by spouses and children, wants to know that they made a difference in this life. Dare to talk to them about values and dreams, not just dollars and cents, and you will have a client for life.

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