# Special Needs, Ethics, Professionalism, and Client Service

## Learning Objectives

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Minor Children

As emphasized throughout this textbook, the major goal of estate planning is to help a person plan for the distribution of assets according to his or her wishes, especially when there are dependent survivors, including young children.

In a “traditional” family unit, when a parent dies, the surviving parent becomes responsible for the children’s welfare. In life insurance planning, a couple with children focuses on the need to replace lost income to ensure the financial security of the survivors if either parent dies. However, traditional families are no longer the norm. Single parenting, divorce, nontraditional living arrangements, and remarriage all create special estate planning challenges.
Another consideration for parents of dependent children is the potential of a common disaster. If both parents are killed in an accident, provision must be made for their children.

Perhaps the most difficult decision parents have to make is who should have custody of their children in the event of the parents’ deaths. Who will provide for the children in the way the parents want? Are grandparents the best choice? Is an aunt or uncle the logical choice? And should the guardians of the children also be the ones to manage the financial assets left for their care? Clearly, there is no single answer. The answer for each family is unique.

We know that, without a will, state law dictates how a person’s assets will be distributed. Many people assume that in the event of death, the surviving spouse will automatically receive all of their assets. In most states, a surviving spouse receives only a portion of the estate—most commonly only one-half—if there are also surviving children. And in at least two states—Arkansas and Kentucky—the entire estate passes to the children. In most jurisdictions, the surviving children of the deceased parents are entitled to inherit a portion of the estate. In some states, however, the surviving spouse receives the entire estate unless the deceased has children outside the marriage.

In reality, for many young couples, the transfer of property is not a major concern. Insurance proceeds and retirement plans, for example, pass directly to a named beneficiary. Property such as homes or checking, savings, and investment accounts is often jointly owned. As a result, the amount of property subject to the intestacy provisions is limited. Does this mean that these couples do not need to plan or do not need a will? The answer, especially when children are involved, is a resounding “No!”

Children are not property that is passed from one owner to another, and even parents who have little concern for the distribution of assets will want to give careful thought to who will raise their children if they are unable.

**Guardianship**

A guardian is a person appointed by a court to manage people who are not legally able to manage themselves because they are minors or because they have been judged by a court to be incompetent to care for their own needs or property. Guardians are appointed by a court and must be discharged by the court when the term of guardianship ends. There are two common types of guardianship:

- guardianship of the person
- guardianship of the property

A **guardian of the person** has the responsibility for the supervision of a person known as a ward. The guardian takes the parental role in the case of a
minor child and is charged with acting on behalf of the physical welfare of an individual.

A guardian of the property has the fiduciary responsibility for the investment and management of the ward’s property. The responsibility is similar to that of the trustee of a trust, managing the assets for the ward’s benefit. Unlike a trustee, however, a guardian does not hold title to the property.

**Naming a Guardian for Minor Children.** When we talk about estate planning, we tend to think in terms of property and taxes. One of the most important aspects of planning—the most important for couples with young children—is the care of children.

In almost all circumstances, a surviving parent is the natural guardian of the surviving minor children of a marriage. But in planning for the children’s future, a number of considerations must be taken into account.

First and foremost, planning needs to cover the possibility of a common disaster that ends the lives of both parents. An automobile accident or airplane crash can kill both parents at once. In cases like this, the future care of the children is left to the courts—all too often leading to complicated, disruptive, and painful custody fights between caring family members, all of whom believe that they represent the children’s best interests. Adequate planning through the parents’ wills is the way to avoid this tragic situation.

The wills of the wife and husband should be coordinated and in agreement as to who should serve as the guardian of the surviving children. A will does not actually appoint a guardian for minor children; instead, it indicates the parent’s desire. Generally, the court follows the parent’s wishes as expressed in a valid will. It will review the choice, and if it finds it appropriate, will appoint the named person as the guardian.

The will can also be used to provide direction to the appointed guardian. It can include instructions for the future of the children and their general care, well-being, and education. The will may state, for example, that the child should be afforded every opportunity to attend a private 4-year college. Although it may be impossible for the guardian to carry out these instructions as written, they do express the parent’s intent.

**Naming a Guardian of Property.** The person named as the guardian of the deceased’s surviving children does not have to be the same person named as the guardian of the property left to those children.

**Example:** Brett and Natalie decide that they would like Natalie’s sister, Dorothy, to be the guardian for their sons in the event of Brett’s and Natalie’s deaths. Dorothy and her husband have no children of their own, but Brett and Natalie think the couple would
be excellent, caring parents and would provide the kind of supportive, nurturing environment Brett and Natalie want for the boys.

In spite of their confidence in Dorothy’s parenting skills, Brett and Natalie realize that she has little experience in managing money. Because the bulk of their estate will be cash from their life insurance, Brett and Natalie want someone who can maximize the value of their estate for their sons’ future. They elect to name Brett’s brother David, who is an accountant, to manage the property.

In their wills, they could have named David as the guardian of the property, but they went one step further to make sure that their wishes for the children would be carried out. Each will called for the creation of a testamentary trust that specified how their assets were to be distributed, making education a priority, and delaying the final distribution until the youngest son reaches age 25. David was named trustee of the trust; he is responsible for the investment, management, and distribution of the funds.

An important step in the planning process is making sure that beneficiary designations of the parents’ life insurance policies are in agreement with their wills. In this example, although they remain each other’s primary beneficiary, Brett and Natalie may have to change their policies to make the testamentary trust, and not their sons, the secondary beneficiary.

The laws governing guardianship vary by state, and the advice of an attorney is essential in designing the will. In some states, only a guardian for the person can be appointed; others allow only the appointment of guardians of the property. In the remaining states, both guardians of the person and guardians of the property can be appointed. In some states, children over age 14 or 15 are allowed to select their own guardians.

Generally, only the court can appoint a guardian, although some jurisdictions do allow appointment to be made in the parents’ will. The identification of the person(s) selected by the parent should be included in a will because the court will usually follow the wishes of the parent if they are consistent with the jurisdiction’s law.

**The Advisor’s Role**

As in all cases dealing with wills, your role in this discussion is general. The provisions of a will must conform to the laws of the state in which it is
drawn, and the services of a qualified attorney are mandatory to make sure the requirements are met.

By helping parents focus on the need to plan for the care and custody of their children, you set the stage for directing their attention to other needs. Once decisions about who should provide the care have been made, the discussion can move to how the care will be provided. Will the selected guardians have the financial resources necessary to provide the level of care that the parents desire? Will adding the children to their family create a financial hardship?

The answers to these questions are not unlike the ones you typically ask for insurance or financial planning except that the estate planning approach focuses attention on the children’s welfare instead of the needs of the surviving spouse.

**Divorce and Remarriage**

Generally, natural parents are the legal guardians of their children. In the traditional two-partner family, at the death of one parent, the surviving spouse continues to be the minor children’s guardian.

As a result of divorce, custody of the children may be assigned to one or the other of the natural parents, or custody may be shared. In either case, if one parent dies, the surviving natural parent becomes the child’s sole guardian.

This creates customized planning needs, especially if parents remarry and begin second families. If the deceased parent is the one who had physical custody of the child, the child may be uprooted, leaving the family unit he or she has known, to live with the other natural parent. This does not have to mean that property left to the child will be in the control of the surviving natural parent. In cases such as this, consideration should be given to using a will to name a guardian of the property.

Because divorce and remarriage are common situations in our society, it is not unusual for a person to have minor children from more than one marriage. In the event of the death of the parent with legal custody of the children from a previous marriage, the surviving natural parent usually becomes the guardian of his or her natural children. Although this is often a touchy area, it is one that needs to be explored with the attorney who is preparing the will and with all concerned parties.

Both parents need to have a clear understanding about what happens regarding the custody of children in a divorce situation. Is there enough life and disability income insurance to guarantee that the financial support will continue if the noncustodial parent dies or is unable to work due to illness or injury? What will happen if the parent with custody dies? Generally, custody of the children will return to the surviving natural parent. Will that parent have the financial resources to assume responsibility of the children? Is there a need for additional life insurance on the life of the parent with custody to safeguard the children’s well-being?
Example: Following his divorce, John Wilson has custody of his son, Henry. John is remarried and has two children with his second wife. The provisions of his will leave everything to his second wife and make no specific provisions for Henry.

John dies in an auto accident. Under his will, his second wife, Millie, receives all of their property. She is also the beneficiary of his life insurance. But she is not Henry’s guardian. John’s first wife, Henry’s natural mother, is his guardian, and the benefits that John had assumed Henry would receive are lost.

In the example above, John’s will probably could not prevent his first wife, Henry’s natural mother, from becoming Henry’s guardian. John, however, could have arranged his estate to leave a share of his property to benefit Henry, naming a guardian of the property to manage it for Henry.

Because divorce often generates strong emotional feelings, these are difficult areas to explore. Nevertheless, they are important and should be part of the overall planning when you are working with families that have minor children.

Naming Beneficiaries

Because life insurance proceeds are part of an individual’s estate, naming the beneficiary deserves careful attention. Naming a minor child as the beneficiary of a life insurance policy is almost always a mistake.

Generally, insurance companies will not accept a minor as either owner or beneficiary of a life insurance policy. Minors do not have the legal capacity to execute the contractual provisions of the policy. For example, a minor is contractually unable to take a loan against the policy.

Because they are minors, underage children cannot legally accept the proceeds from a life insurance policy. Although there is no prohibition against giving the child the proceeds, he or she is legally unable to release the insurance company from its obligation. This problem can be avoided by naming a guardian as part of the beneficiary designation. The exact wording should conform with the guidelines established by the insurance company. If such a designation is made, the proceeds can be paid to the guardian named in the policy without the formal appointment of a legal guardian. Without the designation, the insurance company may withhold payment until the court names a guardian to receive payments on the beneficiary’s behalf.
When naming a beneficiary, specificity is important in order to avoid possible confusion. A general or class designation—children of the insured, for example—can cause problems when the insured has children from more than one marriage. On the other hand, specific designations that are not kept up-to-date can exclude children born after the policy was written.

One solution is to create a trust to receive the life insurance proceeds. The trust document can be written to provide specific instructions on the use and distribution of the funds. This not only avoids the problem of minor beneficiaries, but it can also provide some control of the benefits to meet the parent’s objectives. The trust can be directed to provide for the children’s “continued maintenance, support, health, general welfare and education” until the youngest child reaches a specified age.

The problem of dealing with children of divorce and remarriage is not limited to minor children. Parents with children from more than one marriage or with adult children from a previous marriage also need to take special care to make sure that the parents’ final wishes are carried out.

Children and Adults with Special Needs

Families with members who have special needs—children and adults with physical or mental challenges—face special planning problems. Working with these families requires particular care and sensitivity, as well as an understanding of the programs available to people with disabilities to avoid disqualifying these individuals from receiving benefits.

The majority of people with disabilities can be fully integrated into society with little or no special accommodations. Many are capable of full or sheltered employment. Others need customized assistance or supervision, either full- or part-time. As adults, they may continue to live with their parents or in a supervised living situation such as a group home.

The necessary care, supervision, and support are often provided by parents for as long as they are able. In anticipation of their deaths, however, the parents will want to provide for the continued care of their children; this includes both their physical well-being and financial security. Given the high cost of care, one of the planning goals of parents with a special-needs child is qualifying their child for government benefits. Helping the parents accomplish this goal requires familiarity with local laws and the implementation of carefully drafted plans. Meeting the needs of physically or mentally challenged dependents requires special planning in

- government benefits
- cost-of-care issues
- family considerations
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Government Benefits

To qualify for government benefits such as Social Security disability and supplemental security income (SSI), people with disabilities must meet rigid financial eligibility requirements.

Social Security. If one or both parents are covered by Social Security, their disabled son or daughter will qualify for benefits when the covered parent retires or dies. These benefits are available, regardless of income or assets if the disability began before age 22 and is severe enough to meet the Social Security definition of disability. This definition is that the person must be unable to engage in “any substantial gainful activity by reason of any medically determinable physical or mental impairment” that is expected to result in death or to last for a continuous period of not less than 12 months.

A disabled person’s entitlement continues for as long as he or she remains disabled. If the disability is permanent, benefits will continue for the individual’s lifetime. The surviving spouse of a covered worker will receive benefits as long as he or she cares for the disabled child, whether he or she is a minor or adult.

In addition to the monthly financial support provided by Social Security, entitlement to the payments makes the individual eligible for Medicare benefits. Because Social Security benefits are not based on the disabled person’s income or assets, no special estate planning is required to protect them. In planning for the lifetime needs of the disabled person, however, the anticipated Social Security income should be considered in determining the individual’s cash needs.

Supplemental Security Income. Supplemental security income (SSI) provides a small monthly income for eligible disabled persons who have limited financial resources. These benefits are indexed for inflation and change annually. To qualify, a person must meet the Social Security definition of disability and certain “means” (financial) tests of income and assets.

To be eligible for SSI benefits, an individual’s income must be below the level established by the program. The calculation for eligibility is complicated and takes into consideration a number of exclusions. Both earned and unearned income are included in determining eligibility. The determination also takes into consideration the assets an individual owns. The assets of a trust established for an individual are not considered in the calculation, but the proceeds from a trust may constitute income that would be considered in the income qualification.

Even if the income from the SSI program is not a factor, maintaining financial eligibility may be important to providing medical benefits. If a person qualifies for Medicare benefits, Medicaid can cover costs not covered by the Medicare program. Furthermore, states may provide additional services to SSI recipients, such as dental services, physical therapy, and
home health services, that are not covered by Medicare. The availability of these services may make qualifying for SSI payments advantageous even if the monthly income is not needed.

Care must be taken in creating a trust for a disabled person if SSI eligibility is an important factor, and parents of a disabled person should consult an attorney with experience in the field. Additional information and help may also be available through parent groups and organizations that focus on the specific disability involved. In general, creating a trust that does not require distributions for the individual’s support and maintenance but gives the trustee discretion as to when and how to distribute principal and interest will help protect eligibility for SSI benefits.

Cost of Care Issues

Not all disabled people are able to live in the community. Some must live in residential facilities that specialize in the care of the disabled. When such care is provided in a private facility, the parents of the disabled person or the disabled person (if he or she has financial resources) is responsible for paying for the care.

Likewise, if the care is provided in a state-operated residential facility, the individual or his or her parents are responsible for the cost of the care. In many states, the parents’ liability for the cost of state-run facilities is limited. The individual’s responsibility, however, is not. It continues for the full cost of the care for as long as he or she receives it. In most states, leaving property in a trust for the “support, care, and maintenance” of the disabled person has the same effect as leaving it directly to the person. This means that assets left to an individual, to his or her guardian, or to a trust for his or her support and benefit can be claimed by the state for the cost of the care it is providing. If the costs are not paid during the recipient’s lifetime, the state can make a claim against his or her estate.

Further, the payments made for the care are not directed to the explicit care of the individual for whom the payment is made. The payments go to the general operating fund of the state, not to the specific care or even the specific facility providing the care. This means that money left to a child who needs care in a state-operated facility will not go directly to his or her care. Instead, it will be used to offset the cost of care the child receives.

This creates a unique estate planning issue for parents of children who need care in a state-funded facility. If they leave assets for the child, they will go to the state to pay for the cost of care without benefiting the offspring directly.

The best approach may be to disinherit the disabled person who may someday need public residential services. This does not mean that the parents cannot provide for their son or daughter in the future. Instead, they must find ways to structure their estate to use the property for the direct benefit of the
child without exposing it to the state’s claims. To accomplish this, parents may create

- an informal trust
- a luxury or restricted trust
- a discretionary trust

**Informal Trust.** Informal trusts are not trusts at all, but informal requests to carry out the wishes of the grantor. A parent may simply disinherit the disabled child, leaving everything to his or her siblings or others with an expressed wish for them to meet the disabled child’s needs. This gives the disabled child no assets and thwarts the state’s claim for the cost of the care he or she is receiving.

The disadvantage of this approach is that the person who receives the assets is under no obligation to carry out the parent’s wishes. Unlike a trustee, he or she has no fiduciary responsibility or accountability. Furthermore, the assets the sibling holds are subject to the claims of his or her creditors, and in situations involving the sibling’s divorce, may be subject to the claims of his or her spouse. For these reasons, informal trusts are probably best used only when the amount of assets being transferred is insufficient to justify creating a formal trust.

**Luxury (Restricted) Trust.** Parents can create a testamentary or inter vivos trust with the disabled person as the beneficiary, limiting the trustee to providing luxuries and benefits not provided by the state-run program. This precludes the trust funds from being used for routine care or expenses. Distributions can be limited to trust income, further protecting the principal.

The trust document must be carefully drafted to make clear what the trustee can and cannot pay for, and it must be written in a way that does not challenge the state to contest its provisions. Clearly, this means that it needs to be prepared by an attorney who is familiar with the special needs to be met.

**Discretionary Trust.** In some states, a discretionary trust—one that gives the trustee the power to decide how much income or principal will be used on behalf of the beneficiary—can avoid cost-of-care claims. In states where this is the case, discretionary trusts offer greater flexibility than luxury trusts and can help solve SSI eligibility problems. Discretionary trusts should include a clear statement that the proceeds are intended to supplement public benefits.

**Family Considerations**

Estate planning for a family with a disabled member also requires other considerations. If the disabled person is living at home under the supervision
of his or her parents, who will provide that supervision when the parents die? In some families, siblings will step forward and assume the responsibility. In others, a public institution or private program may be the answer.

Under the law, every adult is presumed to be competent and responsible for his or her own actions. A sibling who provides care for a mentally disabled person is not automatically that person’s guardian. Guardianship of an adult can be assigned only by the court, and without guardianship, the care-providing sibling’s ability to speak for the disabled person is limited.

In planning, each solution has its own set of challenges, and each family is different. There is no right or wrong answer, but planning is essential.

Using life insurance as a funding strategy assures the grantor that financial security will be available to dependents who require perpetual care. The child’s trust, and not the child individually, should be named as beneficiary.

Laws that govern trusts are complex and subject to legislation that varies by state and could affect a special-needs child’s eligibility for government benefits. Setting up trusts requires coordinated planning with an attorney who is knowledgeable in special-needs planning.

**Trusts for Minors**

As discussed earlier under gifting, to qualify for the annual $12,000 gift tax exclusion, the donee must have immediate access to the gift. Making large cash gifts of present interest, however, can create a problem when the recipient is a minor. In recognition of this problem, the IRS makes provision for gifts to be placed in trust for minors and still qualify for the annual exclusion.

**Sec. 2503(b) Trust**

To obtain an annual exclusion for gifts to a trust, an individual can establish a **Sec. 2503(b) trust**, which requires income to be distributed at least annually to (or for use of) the minor beneficiary. The trust agreement states how income is to be used and gives the trustee no discretion. The minor receives possession of the trust principal whenever the trust agreement specifies. A distribution does not have to be made by age 21; principal may be held for as long as the beneficiary lives or for any shorter period of time. In fact, the principal can actually bypass the income beneficiary and go directly to the individuals whom the grantor—or even the named beneficiary—specifies. The trust agreement can also control the distribution of trust property if the minor dies before receiving trust property. Trust assets do not have to be paid to the minor’s estate or appointees.

The mandatory payment of income to (or on behalf of) beneficiaries seems burdensome, especially while the beneficiary is a minor. But such income can be deposited in a custodial account and used for the minor’s...
benefit or left to accumulate until the minor reaches majority (at which time the balance is turned over to the beneficiary).

Although the entire amount of property placed in a Sec. 2503(b) trust is considered to be a gift, for exclusion purposes it is split into two parts: income and principal. The value of the income—measured by multiplying the amount of the gift by a factor that considers both the duration over which the income interest will be paid and the discounted value of $1 payable over the appropriate number of years—is eligible for the annual exclusion. The balance of the gift (principal) does not qualify for the exclusion.

Example: Stella places $10,000 into a Sec. 2503(b) trust that is required to pay her 10-year-old daughter all income until the daughter reaches age 25. The present value of the income the daughter receives over those 15 years is $7,793.66. If the income is payable for her entire life, the present value jumps to $9,894.90.

It is important to note that, according to at least one revenue ruling, the annual exclusion is denied for a Sec. 2503(b) trust that permits the principal to be invested in non-income-producing securities, real estate, or life insurance policies.

Sec. 2503(c) Trust

The Sec. 2503(b) trust described above has the advantage of not requiring distribution of principal when the minor reaches age 21, but it does require a current (annual) distribution of income. The Sec. 2503(c) trust, on the other hand, requires that income and principal be distributed when the minor reaches age 21 but does not require the trustee to distribute income currently.

Certain requirements make it possible for a donor to obtain the annual exclusion for a gift to a minor under Sec. 2503(c): The trust must provide that (1) income and principal are expended by or on behalf of the beneficiary, and (2) to the extent not so expended, income and principal pass to the beneficiary at age 21, or (3) if the beneficiary dies prior to that time, income and principal go to the beneficiary’s estate.

A substantial amount of flexibility can be built into a Sec. 2503(c) trust. Income that has been accumulated, as well as any principal in the trust, can be paid to the beneficiary when he or she reaches age 21. This may be indicated if the sums involved are not substantial. But the donor may want the trust to continue to age 25 or some other age. It is possible to provide continued management of the trust assets and, at the same time, to avoid
forfeiting the annual exclusion by giving the donee, at age 21, a right for a limited period of time to require immediate distribution by submitting written notice to the trustee (this is know as the Crummey provision). If the beneficiary fails to give written notice, the trust can continue automatically for whatever period the donor stipulated when the donor established the trust.

Alternatively, some states have lowered the age of majority from 21 to 18, or to some in-between age. A trust can provide that the distribution can be made between the age of majority and age 21 without jeopardizing the Sec. 2503(c) exclusion. The rule is that 21 is the maximum, rather than the minimum, age at which the trust assets must be made available.

**Uniform Gifts/Uniform Transfers to Minors**

Gifts can be made to minors by transferring property to a guardian under the [Uniform Gifts to Minors Act (UGMA)](https://www.legaltimes.com), or the [Uniform Transfers to Minors Act (UTMA)](https://www.legaltimes.com). Because UGMA restricts the kind of property that can be transferred, most states have adopted UTMA. UGMA accounts are permitted to hold cash, life insurance, securities and annuities, but not real property. UMTA accounts, on the other hand, are permitted to hold just about all forms of transferable property interests.

These custodial gifts are used not only for their simplicity but also because they can offer the benefits of management, income shifting, and the investment characteristics of a trust with little or none of the document drafting costs. There is no court supervision of UGMA or UMTA accounts.

Gifts made under either UGMA or UTMA qualify for the $12,000 annual exclusion. The income from the gift will be taxed to the minor, and the minor has the right to receive the property when he or she reaches the age of majority applicable in his or her state.

The custodian, who may be the donor, holds the property for the minor. The property is registered in the name of the custodian. The custodianship ends when the minor reaches the age of majority in that jurisdiction. If the minor dies, the custodian must turn the property over to the minor’s estate.

If the donor of the property appoints himself or herself the custodian for the minor, the property is included in his or her estate. Because this would defeat the estate tax advantage of the gift, most accounts will have a guardian other than the donor.

Additionally, there can be only one beneficiary for each custodial account. A separate account is needed for each minor recipient.

The minor will be taxed on the income from the custodial account. If he or she is under the age of 18, $850 (in 2006, indexed for inflation) of unearned income (capital gains, interest, dividends and the like) will be received tax free, the next $850 will be taxed at the child’s rate, and the parent’s maximum tax rate will be applied to additional amounts (over...
kiddie tax

$1,700 in 2006). This is known as the *kiddie tax* and was instituted to discourage income shifting from a higher parental tax bracket to a child’s lower bracket. If the child is 18 or older, he or she will be taxed at his or her own rate on all taxable income.

Upon attainment of the age of majority, the minor can demand possession of the gifted property. There is no guarantee that the beneficiary will conserve the property or put it to the use the donor intended. Caution should be exercised if the gifted property is to be used for college education, because the trust property is considered property of the minor and will count against financial aid eligibility at a considerably higher rate than money held by the parents.

### Five Common Characteristics of UGMA and UTMA Accounts

- Minor beneficiary
- Custodian
- Irrevocable transfer of property
- Provision for premature death of minor beneficiary
- Qualification for annual gift tax exclusion

**Incentive Trusts**

Many people are concerned about passing their assets on to children or other family members who may not be able financially or emotionally able to handle an inheritance. Some parents are turning to what is called an *incentive trust*, a controversial type of trust (or trust provisions) designed to promote certain beneficiary behavior by attaching requirements to the trust distributions.

Trusts have long come with strings attached. One of the most common is an age restriction. A child might not receive income or principal from the trust until reaching a certain age such as 25, 30, 35, or older. This allows the beneficiary to mature—an 18- or 21-year-old is less likely to handle the money as well as the person would at age 25 or 30. Another approach is to stagger distributions over benchmark ages, to give the beneficiary the opportunity to learn how to manage money well.

Incentive trusts, however, go beyond age restrictions. They are intended to motivate certain positive behavior by the beneficiary.

**Example:**

A wealthy parent may worry that his or her children have developed a poor work ethic. Accordingly, a trust might provide incentives to work by distribut-
An incentive trust might pay income or principal, or perhaps pay a larger amount or pay it sooner, if the beneficiary graduates from college, maintains a certain grade point average, does work for the family charitable foundation, takes over the family business, or donates a certain amount to charity. Some trusts will not pay out money unless the beneficiary stays free of drugs, alcohol, or tobacco.

Trusts can be as restrictive as the donor wants them to be as long as the restrictions are not illegal. Disinheriting a beneficiary if he or she marries would likely be unenforceable. For instance, you cannot specify that the beneficiary must marry someone of the same race or that the beneficiary must divorce his or her current spouse.

The controversy centers on whether or not restrictions are a good idea. Critics assert that “ruling from the grave” often creates resentment, even hatred. Children resent being parented when they are in adulthood, and incentive trusts are merely the parents’ effort to instill behavior and teach values they failed to instill when the child was growing up. Some critics argue that these provisions are a system of external motivation based on rewards and punishments based on money that are used to control the beneficiaries’ behavior rather than helping them develop an inner drive to do well. Some say such incentives usually do not work anyway. If the child is immature at age 25, for example, why assume that the child will be mature at age 40 when distributions begin? An additional problem may be restrictions that are vague such as defining certain ethical behavior.

Supporters argue that it is wrong to assume that a trust with no restrictions does not also have an impact on the beneficiary. Inheriting large amounts of money can create deep emotional problems for the beneficiary. Why not, supporters say, set up the trust to encourage positive behavior and positive inheritance experiences? Proponents believe that there is nothing wrong with trying to instill values in adult children. They suggest that donors discuss these restrictions candidly with the beneficiaries before the trust creator dies. This helps not only to minimize misunderstandings, but also to assist heirs in planning their own financial life.

A client can create a new incentive trust or add incentives to an existing trust. Many kinds of trusts can be used as incentive trusts: an insurance trust, living trust, credit shelter trust, dynasty trust, a generation-skipping trust, or a Crummey trust, to name a few. It is important to have the trust drawn up carefully and to select the trustee or successor trustee wisely, in the event that the trust must be administered following the grantor’s death. These trusts
usually should give the trustee some flexibility to handle unforeseen circumstances. Incentive trusts also often provide enough of a “safety net” so the beneficiary does not become destitute.

**Special Considerations for Noncitizens**

Our discussion of gift and estate planning has focused on the rules that apply when both a husband and wife are U.S. citizens. A different set of rules applies for resident and nonresident aliens.

**Resident Aliens**

Resident aliens are noncitizens who reside in the United States. Their property is subject to the estate and gift tax laws, no matter where it is located. Residency means that the person actually lives or is “domiciled” in the United States. Living in the United States, even briefly, with no particular intention of leaving to live somewhere else, constitutes residency. The determination is somewhat subjective and influenced by factors such as the location of other family members, business and social activities, and driver’s license.

In general, resident aliens are subject to the same gift and estate tax rules as citizens. The unlimited marital deduction, however, is unavailable to a surviving spouse who is not a U.S. citizen. Although an unlimited amount of wealth can transfer free of federal estate and gift tax from a noncitizen spouse to a spouse who is a U.S. citizen, the converse is not true. Also, gifts made prior to becoming a resident may be included in the resident alien’s gross estate.

**Nonresident Aliens**

The property of nonresident aliens (noncitizens who live outside the United States) located in the United States is subject to both federal estate and gift taxation. Only the first $60,000 of property is free of transfer taxes. Further, the unlimited marital deduction is available only if the surviving spouse is a U.S. citizen.

**Qualified Domestic Trust (QDOT)**

If the surviving resident-alien spouse does not obtain U.S. citizenship, a qualified domestic trust (QDOT) can be used to transfer assets to a surviving resident-alien spouse while preserving the marital deduction for the transfer. A QDOT is a unique transfer vehicle for marital-deduction transfers to surviving resident-alien spouses. The complex nature of this area requires the advice of an experienced estate planner.
The unlimited marital deduction is not available for a spouse who is a noncitizen unless either of the following occurs:

- The noncitizen spouse becomes a citizen prior to filing the deceased’s federal tax return.
- The property is passed to a QDOT

The requirements for a QDOT are as follows:

- The election for the QDOT must be irrevocable.
- The trust must have at least one trustee who is a U.S. citizen and who has the right to withhold any estate taxes due.
- Transfer of property to the trust must otherwise be eligible for the marital deduction.
- Specific procedures must be followed to ensure collection of estate taxes.

Both probate and nonprobate property qualify for QDOT treatment. Property can be transferred directly from the decedent or assigned prior to filing the federal estate tax return.

**Estate Planning for Life Stages and Living Arrangements**

**Elderly and Incapacitated**

Another area of estate planning that deserves special attention is planning for elderly and incapacitated individuals. Although the usual emphasis of an estate plan is the distribution of property to the estate owner’s heirs with the least tax liability, often the preservation of assets during lifetime is far more important to your client than after-death issues. Preparing for the future financial and long-term care needs of the elderly, ill, and incapacitated presents estate planning challenges. For instance, an estate plan that is oriented primarily toward passing property to the next generation becomes irrelevant if the estate is practically decimated by the cost of long-term care. On the other hand, retention of assets can prevent an estate owner from meeting Medicaid eligibility requirements. A comprehensive estate plan must address the implications of the client’s potential need for long-term care.

One possible solution to achieving estate asset-preservation goals and meeting long-term care needs is long-term care insurance (LTCI). For the owners of large estates, money expended to pay LTCI premiums escapes estate taxation. Although long-term care costs may be deductible from the gross estate, there is no assurance that, without LTCI, lengthy long-term care will not exhaust or greatly diminish the assets in the estate.

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Retaining Control with Trusts and Durable Powers of Attorney

Trust arrangements and durable powers of attorney are two devices that allow a client to have continued asset management despite incompetence. The trustee manages the trust property in accordance with the client’s directions as established in the trust document. For example, the client can grant the trustee the power to distribute income or principal at regular, pre-established intervals or at the trustee’s discretion should the client later become incapacitated. Keep in mind, however, that trusts are used specifically for asset management; trustees cannot make personal health care decisions for an incompetent individual. Durable powers of attorney can provide guidance for the personal care and financial decisions that result from a client’s incapacity.

Married Couples

Estate planners may have to take special considerations into account when planning for married couples. In certain areas, U.S. law favors married status and treats a married couple as a single unit (for example, the unlimited marital gift and estate tax deduction and joint income tax returns), but an advisor should be aware that the interests of a husband and wife may not be identical, and may even be conflicting. Thus, one advisor may not be able to fairly address the needs of both parties. Just because a married couple seeks joint representation, the advisor should not automatically assume that the parties share identical objectives. Spousal estate planning and property disposition goals may be especially divergent and complicated when one or both have children from earlier marriages. Other areas of potential conflict may be the existence of one or both spouses’ community property, the subjection of marital or separate property to the claims of one spouse’s creditors, reciprocal wills, the tax consequences of gift splitting, and the control or lack of control that a surviving spouse will have over property after the first spouse’s death.

Clearly, an estate planner for a couple must determine whether the interests of both spouses are the same or adverse. If both spouses are in agreement and appear to be comfortable using the same advisor, joint representation of both parties should not be an ethical or practical problem. If there seems to be marital conflict, however, the advisor should recommend that each spouse seek separate estate planning advice. When a married couple with differing estate planning goals still wants joint advice, all existing and potential conflicts should be disclosed, and the advisor should obtain—for the advisor’s and the clients’ protection—a written waiver or agreement from both parties concerning their joint representation. The agreement can establish some ground rules regarding the disclosure policy of each party’s plan, documents, and joint and separate meetings. Addressing areas of potential conflict at the outset reduces the likelihood of problems for all parties.
Case History—Bob and Ester Gilley

Bob and Ester Gilley are an "old" traditional family. Although Ester was a licensed dietitian and managed a small hospital kitchen before their marriage, she gave up her career when she and Bob married. They raised and educated three children, saved wisely, inherited a modest amount when their fathers died, and moved comfortably into retirement.

At retirement, Bob began to receive a pension and Social Security. Ester receives Social Security benefits based on Bob’s work history. Their house, which is worth $170,000, is paid for and they have approximately $200,000 in investments—$100,000 in CDs and the remainder in miscellaneous mutual funds. Bob has a $10,000 paid-up life insurance policy on his life.

Do Bob and Ester need estate planning? At first blush, there is a tendency to say “No.” Their total combined estate is far less than the amount that triggers federal estate taxes. In their state, at the first death, there will be no state death taxes due if everything passes to the surviving spouse.

But on closer analysis, there are some issues that need to be addressed even though taxes are not an immediate issue. First, both Bob and Ester need to have wills. If everything is titled in Bob’s name, as is often the case with traditional couples, it may not all pass to Ester as intended unless he has a will.

Next, they need to determine if Ester will have enough income if Bob dies first. Their combined Social Security income is approximately $1,600 a month. Bob’s pension is $690 a month, for a total monthly income of $2,290. If Bob dies first, Ester will continue to receive his Social Security benefit—the larger of the two—but will lose hers. She will also continue to receive 50 percent of his pension. These changes will lower her income to approximately $1,500 a month, a reduction of almost $800.

Of course, she will still have the money in the CDs and mutual funds, and these may be more than enough to make up the income shortfall for the rest of her life. They will need to be managed, however. And will they be enough?

What if sometime in the future Ester needs nursing home care? Do Bob and Ester need to plan for long-term care?

If Ester predeceases Bob, the income picture is better, but the total monthly income will be reduced by the amount of Ester’s Social Security benefits. Will the remainder be enough for Bob to live comfortably? What about his long-term care needs?

The answers to all of these questions are very personal and can be determined only through thoughtful fact finding. And they are not static. The answer that is viable today may not be viable 5 years from now.

Subsequent Marriages

The qualified terminable interest property (QTIP) trust is a planning device that was originated to address the concerns of couples in subsequent marriages. The QTIP trust qualifies for the marital deduction in the grantor spouse’s estate, and its value is includible in the estate of the surviving spouse. It provides a method for an individual to provide for his or her spouse but reserves the right to direct the disposition of the assets it holds following the death of the surviving spouse. This allows the grantor spouse
to control the ultimate disposition of property in favor of children born to a previous marriage.

EGTRRA 2001 introduced a complication in traditional estate planning strategy. Prior to 2001, an estate plan would typically leave in a nonmarital (bypass) trust assets equivalent to the applicable exclusion amount to children of a previous marriage and/or current marriage. Because this amount has increased under EGTRRA 2001, it is possible that the balance of the estate left to the spouse may be significantly smaller and effectively disinherit children—or at the least put the dispositions of property out of their intended balance. It may be better to have a specific dollar amount set aside for the children.

**Separation and Divorce**

Estate planning considerations also arise if spouses separate and divorce. In this situation, it is advisable for each spouse to have an attorney or other professional advisor review the estate plans of both persons. This allows both individuals to plan more effectively for the benefit of any children from the union. Both former spouses should also execute new wills, even if their intentions upon death remain the same.

Frequently, an irrevocable life insurance trust (ILIT) is used in divorce situations to provide for a surviving former spouse and children. Often, a trust is created, and the trustee purchases a policy on the life of the wealthier spouse, naming the surviving former spouse or children as beneficiaries. This arrangement can provide for the surviving beneficiaries’ financial needs and, as long as the decedent former spouse does not hold any incidents of ownership in the policy or name the estate as beneficiary, the life insurance proceeds will avoid inclusion in the insured’s estate.

For gift tax purposes, divorcing spouses who enter into a written agreement that addresses their marital and property rights may transfer marital or property rights to each other pursuant to the agreement, free of federal gift taxation. Transfers of property between divorcing spouses that are incident to the divorce are not subject to federal gift taxation because the transfers and giving up of marital rights are treated as being made for full and adequate consideration in money or money’s worth. The divorce, however, must occur with a 3-year period (starting 1 year before the agreement is entered into) for the transfer to avoid gift tax.

**Singles**

Eleven percent of adult women are widows. Widows, widowers, single parents, and confirmed singles over the age of 35 comprise almost 30 percent of the U.S. population, according to the Census Bureau. This group is reported to hold approximately the same percentage of the country’s wealth.
Estate planning for singles may present some planning situations that do not typically arise with married clients. There are often different psychological factors for single and married clients. For instance, some single clients, if they feel alone and vulnerable, may be less trusting. Therefore, more effort on the advisor’s part may be required to build rapport and establish trust. Single parents may be very dependent on child support payments to supplement their income. Widows and widowers may be trying to live on monthly Social Security checks and small pension payments.

It is not uncommon for widows and widowers to need to feel that they can act independently. Many fear becoming dependent on their children and other family members. They want to be able to take care of themselves for as long as possible. Older singles may gain a sense of independence, security, and confidence by knowing they have any or all of the following: investments, a living trust, a durable power of attorney, a living will, an emergency or funeral fund, disability income insurance, and long-term care insurance. A consolidated written list of accounts and their values can also be a source of comfort to singles.

When planning for singles, the advisor needs to recognize that their estate planning objectives and needs are likely to be somewhat different from the goals of married couples and two-parent family households. He or she must plan differently for the single client who is financially responsible for minor children than for the client with adult children who are attempting to manage the parent’s finances or whose family members are asking for loans. The individual who is left financially strapped as a result of becoming single has different concerns from the widow or widower who inherited substantial assets but is overwhelmed by the responsibility and complexity of the inheritance. Although there are some common characteristics (such as the loss of the marital deduction and gift splitting), the advisor must approach and analyze each single’s situation individually and not according to a group stereotype.

**Nontraditional Couples and Families**

Today, the traditional family of husband, wife and children—the nuclear family—is only one of a variety of living arrangements. Only 24 percent of the 105 million U.S. households consist of married couples with children. That figure includes households with remarried parents and blended children; given the country’s high divorce rate, the percentage of single-marriage households is even smaller. In their place is an ever-widening array of households: divorced parents raising children alone, stepparents sharing blended families, singles, widows and widowers, adoptive parents, same-sex partners with or without children, grandparents caring for grandchildren, adult children caring for aging parents, and so on. As nontraditional living arrangements become more common and different financial issues related to those arrangements emerge, it is important to review the financial aspects of these relationships.
Laws That Favor Traditional Families

There are many different aspects of financial and estate planning that are affected by laws, largely created with the traditional nuclear family in mind. More than ever, planning methods and software programs modeled on a traditional household do not apply to nontraditional situations. Although there are nearly 1,400 rights and benefits of marriage at the federal and state levels—many relating to financial matters—individuals in nontraditional families cannot currently take advantage of these rights and benefits. Federal benefits related to income tax, gifting, estate taxes, Social Security, IRAs, and retirement plans governed by ERISA are still out of reach, because under the Federal Defense of Marriage Act, nonmarried persons who live together are seen legally as strangers.

Unmarried Couples

Unmarried couples face many legal difficulties, starting with the home in which they live. For example, if one partner owns the home and wants to put his or her partner’s name on the title (thereby sharing ownership), the donor is subject to gift taxes. If the house is worth $200,000 and the unmarried partner is to become a joint owner, there is a taxable gift on any transferred amount over $12,000. Married couples, on the other hand, are able to transfer property from one partner to the other without being subject to gift taxes.

Estate tax laws are also more favorable for married couples. First, there is the unlimited marital deduction, which avoids estate as well as gift taxes between spouses. State inheritance taxes may also be imposed on money passed from one unmarried partner to the other. Unless the advisor ensures that the proper legal instruments are executed, the unmarried partner may be excluded because under intestate laws, he or she is overlooked in the distribution of property. In most states, if there is no legal spouse or heirs, the state distributes the assets to the closest relative. The unmarried partner receives nothing unless the will specifies the distribution of assets to that person.

Unmarried partners should also have living wills that are used in conjunction with a health care power of attorney or proxy that nominates the healthy partner as agent to protect the other partner’s wishes, including access to the patient-partner in the hospital. Otherwise a blood relative is more likely to be consulted about a patient’s medical wishes than a domestic partner is.

Currently, a few states are recognized as being progressive, proactive, and responsive to nontraditional living arrangement issues. Vermont provides for civil unions that are practically indistinguishable from marriage. Hawaii has a “reciprocal beneficiaries” law with limited rights. New Jersey offers limited domestic partnership benefits. California allows same-sex partners to register as domestic partners for the purpose of obtaining certain legal rights that married couples hold, including the right to inherit a partner’s property, adopt a
partner’s child (under California law, the rights and duties of marriage to persons registered as domestic partners were allowed, starting in 2005), and participate in health care privileges. Massachusetts is, at the time of this writing, the only state to permit and grant full legal marital recognition to marriage between same-gender, Massachusetts-resident couples. Keep in mind, however, that despite the Full Faith and Credit Clause under the U.S. Constitution, which requires each state to give full effect to the laws of other states, there is an exception if giving effect to another state’s law(s) violates a state’s public policy.

A somewhat new document is also gaining acceptance and legal recognition in California, some municipalities, and places of private employment. This instrument may be referred to as a cohabitation agreement, affidavit/contract of commitment, declaration of domestic partnership, domestic agreement, or similar terms. These documents, with relevant registration, may grant employees in nontraditional relationships benefits like health care coverage and leave to care for an ailing partner that were typically reserved for traditional married employees.

**Psychological Factors**

There are many psychological factors to which the advisor should be sensitive, based on the life situation of the various relationships discussed above. In the case of single or widowed persons, there may be feelings of isolation and vulnerability that result in a lack of trust. These individuals may also fear becoming dependent on children or other family members as they age. Divorced persons may have conflicts and other negative emotions in dealing with their former spouses. With unmarried partners, one partner may want the other to show some financial commitment to the relationship, but the partner with more income or assets may be reluctant to do that. Negative family reactions and hostility add yet another layer of problems to estate planning for unmarried couples, especially same-gender couples.

As nontraditional families continue to become more common, modern society has generally grown more receptive to these arrangements. Increasingly, living styles that once were socially impermissible have become acceptable (although such living arrangements are certainly not without controversy and the issue is far from being resolved socially or politically). The failure of nearly half of all marriages and a weariness of litigating domestic issues have contributed to this increase in tolerance.

When working with married couples, advisors have ample state and case law for guidance. However, with the exception of the 26 states (including Washington, DC) that recognize common-law marriages and court decisions addressing palimony claims, there is no legal point of reference for individuals who live together outside of marriage. Simply living together is
not sufficient to constitute a common-law marriage in those states that do recognize a common-law arrangement. A common-law couple must also publicly represent themselves as husband and wife and meet specific living requirements. Palimony lawsuits, on the other hand, are grounded on contractual claims for support after relationships have terminated. Discrimination law, rather than marital law, provides guidance for some other aspects of nontraditional living arrangements. Many of these cases arise from claims of different treatment due to sexual preference.

Just as the parties to a valid marriage can enter into agreements that delineate property ownership, rights, duties, expectations, obligations, and so forth in pre- or postnuptial contracts, unmarried persons who live together can enter into cohabitation agreements. These agreements can give structure to the living arrangements and may reduce the likelihood of palimony litigation if the relationship later dissolves.

Advisors are sailing in relatively uncharted waters when planning the estates of clients who are living together outside of marriage. As with married clients, an advisor should at the very least suggest separate, independent advisors for each of the partners both to safeguard their rights and to protect the advisor from conflicts of interest and claims of malpractice. The advisor has to consider also that such relationships are more easily terminated than marriages that are recognized under state law.

The presence of children adds to the complexity of estate planning for clients in nontraditional living arrangements. One of the partners may be the biological, custodial parent of children from a previous marriage or relationship. A nonbiological partner, however, may seek custody or visitation rights or may otherwise want to provide for the children. Grandparents and other senior-generation family members may also be relevant in estate plans. Adoptions, stepchildren, half-siblings, surrogate births, artificial insemination, and in vitro fertilization all make the planning process even more confusing and intricate. Typical methods to plan for children of a previous relationship include annual gift tax exclusion gifts, trusts for the children under the Uniform Transfers (or Gifts) to Minors Act, testamentary trusts, life insurance, and Social Security benefits.

Addressing Estate Planning Concerns of Nonmarital Partners

The unavailability of the unlimited marital gift and estate tax deduction is the greatest tax planning hurdle to overcome in estate planning for unmarried couples. Other tax perspectives are necessary because tax matters cannot be postponed as readily without the marital deduction option. There are, however, several common estate planning methods used for nonmarital partners.
Joint Tenancy with Right of Survivorship

Titling property as joint tenants with right of survivorship is one way to provide for an unmarried partner. At death, the property passes directly to the surviving party to the relationship. Although holding property in joint tenancy with right of survivorship provides a certain sense of security for same-gender or other unmarried parties, there are some considerations that the individuals should be aware of with respect to this form of ownership:

- It may be possible for one of the unmarried parties to sever a joint tenancy.
- With bank accounts and certain other assets, either partner may be able to make withdrawals or obtain the property, irrespective of his or her percentage of contribution to the account.
- The creation of a joint tenancy may cause gift tax liability.
- The joint-tenancy property may be reachable by the creditors of both partners.

Gifting

Outright transfers of property utilizing the annual exclusion, or the donor’s applicable credit amount if the transfer exceeds the annual exclusion amount, avoid gift tax liability. Of course, gift splitting is not an option in nonmarital situations.

Testamentary Bequests

Provisions may also be made under a client’s will for a partner with whom the client lives. Clearly, federal and state marital deductions cannot be used by unmarried couples. Also, will provisions do not become irrevocable until death and could then be vulnerable to will contests by the decedent’s lineal heirs. Challenges to a will are especially likely from the decedent’s children from a marriage. Therefore, unmarried partners who desire to provide for each other under a will must be aware that family members—even those who appeared to accept their deceased relative’s significant-other prior to death—may contest the will after the death of their family member. If the survivor to the relationship receives less than what was promised or expected under his or her partner’s will, an election against the will is not available. If the decedent dies without a valid will, the survivor will not receive anything, because, as noted earlier, state intestacy statutes are based solely on blood relationships. Moreover, if either life partner wishes the other to be the estate’s executor, the will should specifically nominate that partner because a court will often be more inclined to appoint a sibling, parent, or child rather than the unrelated partner.
Revocable Trusts

A revocable trust may prove more dependable than a will for ensuring that property passes according to unmarried partners’ wishes. An unmarried partner may use a living or a revocable trust arrangement to provide for the other party to the relationship by naming the partner as beneficiary. At the death of the grantor-partner, the trust becomes irrevocable and the beneficiary partner receives the property or the income from the property according to the terms of the trust. The trust document may provide for alternates and may name a successor beneficiary in case the specific relationship is not sustained until the grantor’s death.

Life Insurance Plans

Life insurance may name an unmarried partner as beneficiary, thereby providing the partner with a sense of security during lifetime and with funds at the insured’s death. If the same-gender partners are concerned about listing their partners as the beneficiaries of benefits that their employer provides, naming a trust with the partner as trust beneficiary may be a solution. Also be aware that retirement benefits may not be made available to a surviving unmarried partner in the way that they are to a surviving spouse. For that reason, using life insurance on the life of the pension participant to supplant the loss of retirement benefits when the retiree-partner dies may be a viable option.

Because a domestic partner generally does not have an insurable interest in the insured partner’s life, the purchase of a life insurance policy on the partner’s life may prove difficult. An ILIT, however, may be used to overcome the insurability-requirement obstacle and achieve the partners’ goals. With an ILIT, the trust is the policyowner and the partner is the trust beneficiary. For grantor-partners concerned about the irrevocability element of an ILIT and the potential for the relationship to fail in the future, the trust may be drafted to contain provisions directing the policy proceeds to someone other than an estranged partner under specified circumstances.

Life insurance needs in nontraditional relationships are basically the same, arise for similar reasons, and are just as important—if not more important—as in traditional relationships.

ETHICS AND PROFESSIONALISM

Working with the Estate Planning Team

Most advisors who have been in the financial services business for any length of time have at least one story of an accountant or attorney who squelched a big deal. This experience can leave a bad impression of the impact that other professionals can have on your recommendations.
The fact remains, however, that if a prospect already has a relationship with a professional advisor, it is unrealistic to expect the prospect to make a decision without consulting that advisor. After all, your recommendations almost always touch on legal and tax issues—issues that require the involvement of an attorney and sometimes an accountant. These advisors are important to the planning process, so you should involve them from the beginning. Embrace their advice. Your relationship with them should not be adversarial but cooperative. You have the same objective—the best plan for your prospect.

**Determining if There Are Existing Advisors**

One of the first things you should do in your relationship with a prospect is to determine to whom he or she turns for advice. As you begin to gather information about the prospect early in your initial interview, ask for his or her attorney’s name. Follow up your question by establishing how strong their relationship is and for what kind of work and advice the prospect relies on the attorney. You may find that there is not a strong relationship. For instance, the attorney may have had no contact since he drew up the prospect’s will 10 years ago. The accountant who does nothing more than prepare the annual tax returns may not be an advisor at all. If, however, your client already has a working relationship with another advisor, that advisor should be involved in the planning process as soon as it is apparent that he or she will influence your client’s decision. When it is time to make determinations about complicated financial matters with tax implications far into the future, for example, doesn’t it make sense to involve an advisor with a tax and accounting background?

**Getting Permission to Contact Other Advisors**

Of course, you should never contact a prospect’s advisors without first getting the prospect’s permission. In fact, if you do contact them without permission, you may find them very unreceptive to your call. Attorneys and accountants, like you, have a responsibility to keep the information they have about a client confidential. Do not expect them to be any more willing to discuss a client’s affairs than you would be.

The best way to obtain permission is to have your prospect contact his or her other advisors, alerting them that you and the prospect are working together and authorizing the advisors to provide the information you need. If possible, it is best to have this in writing so that the advisor has a copy for his or her files. You can provide the prospect with a letter or form to use.

**Following Up**

When you know the letters to the prospect’s other advisors have been sent, follow up with a phone call to the advisor. Introduce yourself and refer
to the prospect’s letter. Explain briefly the area of work you are exploring, and ask for an appointment.

When you meet with a prospect’s advisors, prepare carefully. You want the meeting to be short and to the point. Be prepared to discuss the matter(s) you are examining; know what information you need to gather. Ask the advisor how he or she feels about the direction you are taking, and find out what experience he or she may have in that field. Determining ahead of time that the prospect’s attorney, for example, has little experience in developing trust documents lets you know that you may have more work to do. Offer to share the resources you have available such as sample agreements your company provides. Communicate to the advisor that both you and the prospect value the advisor’s input.

If the advisor opposes your ideas for the prospect or has an approach that he or she thinks is better, it is best to learn this early in the process. Discover what the objections are. Ask what the advisor would recommend to accomplish the goals you have identified. Let him or her know you need the advisor’s input so that the plan can be tailored to meet the prospect’s specific needs.

**Keeping It Positive**

Sometimes you will find that you and the advisors do not fully agree on the plan you are proposing. This does not mean that you cannot work together. Your first selling job may be to the other advisors. Ask for their opinion. Get their input on how they think the problem should be solved. Listen to what they have to say. Find the common ground between you.

You may also find that the advisors do not agree. The attorney may favor one solution, while the accountant likes another, and you see a third. Explore all of the options. Build your case on the facts. Consider the validity of the advisors’ opinions and build on them.

Under no circumstances should you make negative comments about the other advisors to your prospect. Acknowledge different points of view and explain why you think yours is the best. Deal with the other advisors’ concerns as if they were objections to the sale. That is, in fact, what they are. You can address their objections without attacking the advisors’ credibility or expertise.

**Working with Nonprofessional Advisors**

There may be nonprofessional advisors, too, and you need to take these people into consideration. Most often, estate planning is performed with a husband and wife together, and it is not uncommon for one or the other to seem to make most of the decisions. Even when this is the case, you must check for agreement between husband and wife. If one or the other does not understand or does not agree with your recommendations, his or her influence may well keep the plan from being implemented.
The attitude of outside advisors, professional or otherwise, can make or break your proposal. Involve them from the beginning. Make sure they understand your recommendations and buy into your proposal before you try to close. Make them advocates for what you are proposing instead of adversaries.

**Need for Professionalism in Estate Planning**

To work successfully with other professionals, you must be professional. But what does that mean? What does it take to be a professional?

To be professional means that you must have the technical knowledge necessary to provide support and advice to your prospects and clients. You must have a thorough understanding of your products. You must comprehend the problems that your prospects and clients face and how your products can be used appropriately to solve these problems.

In estate planning, you must be conversant in the legal and tax consequences of the recommendations you make. You must also be able to outline the positive and negative implications of the various planning tools so your prospects and clients can make informed decisions about their options.

A career in financial services carries with it a tremendous responsibility. You talk to and advise others about protecting and improving their financial security. You offer recommendations that can affect families, individuals, or business owners in every aspect of their lives. You are in a fiduciary position; you offer professional advice about financial matters and are expected to act in the best interest of the client. In doing so, you have an absolute obligation to maintain the highest ethical standards. It is this responsibility, combined with the specialized training and knowledge required in this career, that raises financial services sales to the professional level.

What must you do to live up to that responsibility? Certainly, you must comply with all applicable laws and regulations. But professionalism and ethical conduct demand more than simply that compliance.

According to Burke A. Christensen, JD, CLU, former general counsel and vice president of the Society of Financial Service Professionals, “A professional is a person engaged in a field that requires (1) specialized knowledge not generally understood by the public, (2) a threshold entrance exam requirement, (3) a sense of altruism, and (4) a code of ethics.”¹ The specialized knowledge in the financial services field is immediately evident in the complexity and depth of the information the advisor must master. Advisors must also pass licensing exams, maintain continuing education requirements, and keep up with current state and federal regulations and tax and legislative changes. The third requirement, a sense of altruism, is the characteristic that promotes adherence to the fourth requirement, a code of ethics. **Altruism** is defined as an unselfish regard for the welfare of others. Altruism does not mean working for free or giving away your services. It does mean acting unselfishly, taking others’
needs and concerns into account before your own. Demonstration of altruism can be its own reward; it often wins trust, confidence, and reliance, which are all important to success as an advisor.

Compliance and ethical conduct have taken a greater role in the insurance and financial services industry over the last few decades. Compliance means following the laws and regulations, including company rules that apply to the sales of insurance and financial products. These are the minimum standards. State and federal laws regulate the insurance and securities industries to protect consumers from unfair sales practices. Company rules are designed to make certain that the company and its advisors are following state and federal requirements. The rules are also designed to ensure that the company receives complete and accurate information on which to base underwriting and claims decisions. Following these regulations and rules is the first step in professional conduct.

The desire to help a prospect and the necessity to earn a commission and meet your company’s production requirements may place the advisor in a conflicting situation. Fair business practices, legal requirements, and company rules sometimes seem to interfere with your best sales efforts. How that apparent conflict is resolved is a matter of ethics, and it goes beyond simple compliance with the law.

Ethical behavior is doing the right thing. Professional ethics can be defined as behaving according to the principles of right and wrong that are accepted by your profession. Behaving ethically requires putting the prospect’s best interest before your own, maintaining the highest standard in all your business dealings. It encourages you to continue developing your skills to provide the best service to those with whom you work. Representing the industry, its companies, and its advisors in the best possible light is the ethical thing to do.

Professionals adhere to a code of ethics. As a financial advisor, you should endorse and follow the code of ethics of your professional organization. The American College, The National Association of Insurance and Financial Advisors (NAIFA), the Society of Financial Service Professionals, and the Million Dollar Round Table have all adopted codes of ethics with which you should be familiar.

The Financial Advisor as a Catalyst

Your role in the planning process can be as a catalyst and coordinator: First, you must illustrate the need for estate planning and motivate your prospects to action. Once you have accomplished this, you can help prospects move through the steps that lead to the completion of their plan.

Constant Study

To be professional, you must keep yourself educated. Not only do you have to learn the basics, but you must also keep studying. You need to be
able to address the exceptions and complications that are often part of an estate planning case, as well as the routine situations.

In estate planning, your study never ends. You must keep up with tax law changes and the Internal Revenue Service’s interpretations of the law. A private letter ruling on an estate case, for example, although not binding on other cases, is an interpretation of the tax law and may suggest a trend in the IRS’s thinking. Membership and participation in the industry’s professional organizations are also important and offer an opportunity for continuing education.

**Client-Centered Process**

To be professional, you also need to be client centered. That means you have to put your clients’ interests before your own. Client-focused selling is a sound approach to developing good relationships with clients because it concentrates on meeting clients’ needs.

In estate planning, your job is much more than making a product sale. Your professional responsibility is to help your prospects and clients identify and implement all the steps that will enable them to accomplish their estate planning goals, whether or not it involves a sale.

**Legal and Ethical Requirements**

Professionalism requires you to meet the legal and ethical standards of the industry. You must be licensed to discuss the products you sell in all jurisdictions in which you work. If you sell variable products, you must be a registered representative. Identify yourself properly. In many jurisdictions you cannot identify yourself as a financial planner or investment counselor unless you hold a special license. For example, let your prospects know that you are an advisor who specializes in estate planning if that is what you are.

Estate planning involves many legal and tax considerations. Unless you are also a licensed attorney, it is illegal for you to give legal advice. Although you can discuss legal considerations in general terms, you cannot provide legal advice or draft legal documents.

**COMMON ETHICAL ISSUES FOR THE ESTATE PLANNER**

**Compensation**

In financial services, in general, and estate planning, in particular, the issue of compensation can raise a host of problems. Obviously, an advisor needs to be compensated for work done. But when the compensation is based on a commission on products sold, a problem can arise. The advisor might be
The advisor might be tempted to sell a lucrative product that may not be as good for the client as a less expensive product. To avoid such temptations, should the advisor work only on a fee-for-service basis? What sort of commission structure should be established? Should the advisor take fees for referrals? Should the advisor split commissions with other members of the team? What system should be set up to guarantee fair compensation with a minimum of temptation? These are just a few of the issues that arise concerning advisor compensation.

Confidentiality

As a professional, you have an obligation to keep prospect and client information confidential. By the same token, do not expect other professionals to share information or discuss your prospects or clients with you without their permission.

A client seeking a plan to best suit his or her needs must give the advisor full and accurate information about both his or her financial position and personal relationships. To do this, the client must feel confident that the information will be protected. Building the right client-advisor relationship through patience and diplomacy requires both sensitivity to the client’s needs and the ability to earn his or her trust. Once a plan is completed, the client should be in control. The authority to release any information concerning that plan should come only from the client.

When you begin working with new prospects, share with them your need to discuss their situation with their other advisors. As mentioned earlier, if you have to review specific information, have the prospect contact his or her advisors to obtain the information you need, or ask the prospect to notify the advisors and authorize them to release the information. If the information you need is specific, prepare a letter or release for your prospect to sign that authorizes the other advisor to provide the information.

Conflicts of Interest

One of the most frequently discussed ethical problems is how to avoid conflicts of interest. Every client is entitled to develop an estate plan that uniquely reflects his or her intentions. The client’s interest should be paramount. Conflicts with the interests of the clients, other people, or the advisor should be avoided.

The following guidelines should help you to minimize conflicts of interest:

- Inform the parties you represent of the pros and cons of the proposed action (or inaction) on each party.
- Do not use your special knowledge to the detriment of the client in any way.
If you represent two parties with conflicting interests—for example, a husband and wife who are both clients—there may be information that should not be shared, or that forces you to try to address incompatible positions. Do not represent both clients if you are not satisfied that you can perform adequately and make full disclosure to, and obtain consent from, the affected parties.

Do not allow the pursuit of financial gain or any other personal benefit to interfere with the exercise of sound professional judgment and skills.

Give full disclosure of any conflicts of interest in writing to the client.

**Competence**

A difficult ethical issue is acknowledging your own competency level. Recognizing limits in your own competency could mean having to share compensation with another professional, or requiring clients to pay more for higher-quality services. A lawyer is competent in one area, an accountant in another, a financial advisor in still another. Failure to recognize competency limits could result in the lawyer’s being tempted to recommend certain financial instruments he or she is not qualified to recommend. The tax accountant could be tempted to act as a financial advisor. The advisor might be tempted to “practice law without a license.”

**Example:** If David gives tax advice to his client, he had better be an expert in taxation. Whether David is practicing law or accountancy is not the issue. If he is giving tax advice, he should have a competence in that area.

Be sure you are competent in any area in which you provide advice. This entails, in part, being aware of all the consequences of your recommendations.

**Compliance**

Compliance means obeying the law. Most of the time, it is certainly ethically required that we obey the law. Although the goal of compliance is to improve ethical behavior, simply being in compliance and satisfying the letter of the law will not engender ethical behavior. Compliance with the law is not the same as being ethical. It is a mistake to equate following the law with being ethical. Compliance focuses on meeting basic legal requirements;
it emphasizes the letter of the law, rather than addressing the reasons for the law and the spirit of the law.

**Communication**

Communication is necessary at all levels. Advisors must communicate with clients and with each other. All communication is time consuming if it is done properly. In addition to the time involved, communication requires honest disclosure and understanding on the part of both the advisor and the client. Thus, it also requires integrity and adequate disclosure.

Good communication is based on active listening. Active listening introduces a psychological involvement into listening or attending to others. It brings personal involvement to the message, putting the nonverbal behavior, the tone of voice, the connotation of the words, and the meaning of the message together.

An active listener is an understanding listener, one who attempts to see the world from the other person’s frame of reference. Active listening demands that you involve yourself in the inner world of another person, while, at the same time, maintaining your own identity and being able to respond meaningfully to the other person’s messages. Active listening involves being alert, perceptive, and creative in determining what your prospects feel or think about their needs and desires.

Here are a few techniques for sharpening your listening skills:

- *Ask good questions, then wait for the answers.* This is not just polite; it shows that you respect your question and your prospect’s answer to it enough to hear that answer. Put aside your personal issues and concentrate on hearing what the prospect has to say.

- *Give feedback.* Repeat the essence of what you just heard, using the same or similar words to paraphrase or restate what the prospect said.

**Example:**

If your prospect, Sid, says that he purchased his present coverage 4 years ago, you might say, “I understand that you bought the coverage in a plan of insurance designed 4 years ago. Have you talked to an advisor about it within the last year? Are all the interest-return projections still current?”

This demonstrates active listening and concern. If you comment meaningfully, the prospect will know that you are paying attention and may offer more information.
• **Check for experiences, behaviors, and feelings.** Ask for examples if your prospect says something you are not sure you understand. Ask questions to clarify information; this helps you better understand and also indicates to the prospect that you have a genuine interest in him or her. You might say, “I’m not sure I know what you mean. Have you had an experience in this area that makes you feel this way?” Responding to human issues and feelings shows that you have empathy.

• **Use your own examples to clarify, if necessary.** If your prospect is having difficulty articulating an idea, give a brief example from your own experience and ask if his or her experience is similar. If it is not, ask how your experience differs from the idea or feeling the prospect was trying to share. This technique should help prospects focus on what they are trying to express.

• **Take a break and change tactics if you detect that the prospect’s interest is wandering.** If, for example, the prospect is fidgeting or ruffling papers, ask if he or she is comfortable with this part of the interview. The answer may be a simple yes, or it may show that you need to move faster, slower, or with more deliberation and explanation. Make sure you and your prospect are on the same course, moving at the same pace.

• **Check nonverbal clues.** When people lean forward and make eye contact, they are often demonstrating interest and involvement. Lean back, crossing arms over the chest, propping feet up on the table, and losing eye contact are all signs that interest is waning. These actions are not to be confused with an abrupt break in eye contact when your question is especially poignant or disturbing. This may happen when you ask, “What would your family be doing today if you had died last night? What would you like them to be doing?” When a troublesome question causes an abrupt break in eye contact, let the prospect think about the answer in silence.

• **Give good physical attention.** Face the prospect in an open posture. Lean toward him or her. Maintain good eye contact and be relaxed. Listening is communication, too. When we listen carefully, with understanding, and we respond relevantly, we are communicating to the prospect, “I care about you and what you are saying.”

• **Respond to the last answer or comment.** Do not simply go through a prepared list of questions. Make the next question you ask relate to or follow logically from the prospect’s last answer—not from your last question. Keep the questioning in your prospect’s perspective and line of thought as much as possible.

• **Ask yourself what the prospect really means.** If you do not know what the prospect really said, request clarification. You may ask, “Just to make sure I understand what you mean, would you explain it again? Can you give me an example to demonstrate your point?”
Cooperation

Cooperation between members of a planning team is crucial. The codes of ethics of different professions are based on ethical principles and are, therefore, quite similar. However, there may be conflicting obligations among the different professions. An insurance agent has an obligation to the company to disclose the illness of a client, while an attorney has no such obligation. An accountant has an obligation to the general public that can put the accountant at odds with an attorney who has the obligation to be an advocate for a client. At any rate, it should be clear that the members of a team have a responsibility to consult with one another for the best interest of the client, even if that means taking extra time to do so.

In spite of the many issues that advisors face today, what is not at issue is the fact that every professional estate planner owes his or her first responsibility to the client.

Protect Yourself

Notwithstanding all your professionalism and care, mistakes and misunderstandings do happen, and you need to protect yourself. Your exposure to the risk of lawsuits, like any other liability, can and should be insured.

One way to protect yourself is documentation. Start by making a complete assessment of your prospect’s needs. Focus on all the needs, not just the ones that represent a sale for you. Make your recommendations in writing and keep copies, signed or initialed by your prospect, in your files. Likewise, keep copies of all correspondence and records of all conversations.

SERVICING THE PLAN

Once the estate plan is implemented, the relationship between you and your client should be an ongoing one because your client’s personal and financial situation will change over time as he or she moves through the stages of the financial life cycle. Estate planning is a never-ending process, which takes us to the eighth and final step in the selling/planning process—servicing the plan.

By servicing the plan we mean two things: first, monitoring the progress of the plan and, second, delivering promised services to the client. Together, they work to satisfy your present clientele and provide you with referrals and additional business—key ingredients in building a successful practice.

Monitoring the Plan

After the estate plan is implemented, you should periodically review its progress in solving your client’s problems and/or achieving your client’s
goals. Usually, this would require you to meet with your client once each year. However, if the circumstances warrant it or your client requests it, you may meet more or less frequently.

If the periodic plan review shows that satisfactory progress is being made toward achieving the client’s goals, no action needs to be taken. If, however, performance is unacceptable and/or there has been a significant change in your client’s personal and/or financial situation, his or her goals, or in the economic and financial environment, you should repeat the selling/planning process, beginning with step 3. It will typically take less time and effort to update an estate plan than it took to develop the original one.

**Defining Responsibilities**

Together, the financial advisor and client must define their monitoring responsibilities. As the advisor, you must clarify and define your role in the monitoring process. You and your client may have different perceptions and expectations about monitoring responsibilities, especially if other advisors are involved in the overall process.

When monitoring is included within the advisor/client relationship, the advisor should identify which monitoring activities are appropriate. He or she should define and communicate those activities that he or she is able and willing to provide. The advisor and client must agree on the extent, frequency, and duration of the monitoring activities that the advisor will provide. The client-advisor relationship, as originally defined, may need to be modified.

Monitoring responsibilities may include but are not limited to:

- identifying changes in conditions that would affect the current plan and existing recommendations
- obtaining information from the client to determine changes in personal circumstances
- reviewing work done by other professionals or providers
- evaluating the client’s progress toward achieving estate planning goals

As stated above, the monitoring process may reveal the need to repeat steps 3 through 8 of the selling/planning process. Changing needs and circumstances often make this necessary.

**Annual Review**

The estate planning solutions formulated today will not necessarily fit the needs of tomorrow. Estate planning must be an ongoing process. Our clients move, switch jobs, have children and grandchildren, divorce, remarry, and retire (to name just a few possibilities). The external environment evolves as
well, with changes in tax laws, economic realities, and market conditions that may affect the estate plan in place. We, as financial advisors, must recognize the impact of these events on the plan’s design, recommendations, and implementation.

One way that we can help our clients adjust to these changing circumstances is through an annual planning review. This visit enables us to maintain contact with our clients and to monitor their current goals compared to their goals of the past. This service can help our clients avoid planning problems and alert them to take necessary and timely action. The annual review also gives us an opportunity to build rapport and enhance credibility with our clients.

The Checklist for Estate Planning Review in figure 8-1 can be a starting point for these discussions. The checklist can either be used in a face-to-face interview or enclosed with a cover letter to the client as an preliminary private review before you meet with him or her in person. Some companies may have drafted a similar compliance-approved annual review form. Ask your manager whether such a form is available. Obtain compliance approval before using the form in this textbook.

Conducting the Periodic Review

Monitoring is integral to the ultimate success of an estate plan and to your ongoing relationship with your client. A properly developed and implemented estate plan should be monitored and revised to ensure that it is doing what your client intends for it to do. Therefore, monitoring should be part of the basic service package you offer to all planning clients. There are several key points to consider in conducting a periodic review.

Set the Expectation. Build your client’s expectations regarding the value of your service throughout the selling/planning process. This is one important benefit that can distinguish you from your competitors. Lay the groundwork for your service commitment early in the planning process—in the first interview when you explain how you work and the services you offer. Position yourself as someone who helps your clients uncover their estate planning goals, creates and implements a plan to achieve them, and continues to monitor their plans and make adjustments as needed. Demonstrating your commitment to service by regularly monitoring your client’s plan shows the importance you place on helping your client realize his or her estate planning goals.

Set the Appointment at Implementation Meeting. Your goal after step 7 of the selling/planning process (implement the plan) should be to schedule a meeting with your client for step 8 of the process (service the plan). Remember, however, that different clients have different needs and expectations of the process, so never try to force your client into a predetermined timetable. Rather, establish a mutually agreeable schedule for reviews.
<table>
<thead>
<tr>
<th>Change in</th>
<th>Has Occurred</th>
<th>Is Expected</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Marital status</td>
<td>Marriage</td>
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</tr>
<tr>
<td></td>
<td>Separation</td>
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</tr>
<tr>
<td></td>
<td>Divorce</td>
<td>□</td>
</tr>
<tr>
<td></td>
<td>Remarriage</td>
<td>□</td>
</tr>
<tr>
<td>2. Number of dependents</td>
<td>Increase</td>
<td>□</td>
</tr>
<tr>
<td></td>
<td>Decrease</td>
<td>□</td>
</tr>
<tr>
<td>3. Health status</td>
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<td>□</td>
</tr>
<tr>
<td></td>
<td>Spouse</td>
<td>□</td>
</tr>
<tr>
<td></td>
<td>Dependent</td>
<td>□</td>
</tr>
<tr>
<td>4. Residence</td>
<td></td>
<td>□</td>
</tr>
<tr>
<td>5. Occupation</td>
<td>Client</td>
<td>□</td>
</tr>
<tr>
<td></td>
<td>Spouse</td>
<td>□</td>
</tr>
<tr>
<td></td>
<td>Dependent</td>
<td>□</td>
</tr>
<tr>
<td>6. Family financial status</td>
<td>Borrowing</td>
<td>□</td>
</tr>
<tr>
<td></td>
<td>Lending</td>
<td>□</td>
</tr>
<tr>
<td></td>
<td>Gifts over $1,000 received</td>
<td>□</td>
</tr>
<tr>
<td></td>
<td>Gifts over $1,000 made</td>
<td>□</td>
</tr>
<tr>
<td></td>
<td>Purchase of property</td>
<td>□</td>
</tr>
<tr>
<td></td>
<td>Sale of property</td>
<td>□</td>
</tr>
<tr>
<td></td>
<td>Investments</td>
<td>□</td>
</tr>
<tr>
<td></td>
<td>Inheritance</td>
<td>□</td>
</tr>
<tr>
<td></td>
<td>Deferred income</td>
<td>□</td>
</tr>
<tr>
<td></td>
<td>Pension plan</td>
<td>□</td>
</tr>
<tr>
<td></td>
<td>Tax-deferred annuity</td>
<td>□</td>
</tr>
<tr>
<td></td>
<td>Dependent's income</td>
<td>□</td>
</tr>
<tr>
<td>7. Sources of income</td>
<td>As employee</td>
<td>□</td>
</tr>
<tr>
<td></td>
<td>From self-employment</td>
<td>□</td>
</tr>
<tr>
<td></td>
<td>From tax-exempt employer</td>
<td>□</td>
</tr>
<tr>
<td></td>
<td>From investments</td>
<td>□</td>
</tr>
<tr>
<td></td>
<td>Inventions, patents, copyrights</td>
<td>□</td>
</tr>
<tr>
<td></td>
<td>Hobbies, avocations</td>
<td>□</td>
</tr>
<tr>
<td>8. Income tax status</td>
<td>From single to joint return</td>
<td>□</td>
</tr>
<tr>
<td></td>
<td>From joint to single return</td>
<td>□</td>
</tr>
<tr>
<td></td>
<td>Capital gains</td>
<td>□</td>
</tr>
<tr>
<td></td>
<td>Capital losses</td>
<td>□</td>
</tr>
<tr>
<td></td>
<td>Charitable contributions</td>
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</tr>
<tr>
<td></td>
<td>Unreimbursed casualty loss</td>
<td>□</td>
</tr>
<tr>
<td></td>
<td>Sick pay received</td>
<td>□</td>
</tr>
<tr>
<td></td>
<td>Unreimbursed medical expenses</td>
<td>□</td>
</tr>
<tr>
<td></td>
<td>Tax-impact investment(s)</td>
<td>□</td>
</tr>
</tbody>
</table>

Checklist continues on next page.
FIGURE 8-1 (Continued)
Checklist for Estate Planning Review

<table>
<thead>
<tr>
<th>Change in</th>
<th>Has Occurred</th>
<th>Is Expected</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>9. Property ownership</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Purchase in joint ownership</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>Purchase, client owned</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>Purchase, spouse owned</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>Purchase, dependent owned</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>Transfer to joint ownership</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>Transfer to client</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>Transfer to spouse</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>Transfer to dependent</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>Transfer to trustee</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td><strong>10. Liabilities</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Leases executed</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>Mortgage increase</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>Lawsuit against</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>Judgment against</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>Unsecured borrowing</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>Cosigning of notes</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td><strong>11. Business ownership</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>New business formation</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>Interest purchase</td>
<td>☐</td>
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<tr>
<td>Sale of interest</td>
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<td>☐</td>
</tr>
<tr>
<td>Transfer of interest</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>Reorganization among owners</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>Liquidation</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>Change of carrier</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>Termination or lapse</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>Surrender</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td><strong>12. Legal document status</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Change in last will</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>Change in trust</td>
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<tr>
<td>Buy-sell agreement</td>
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<tr>
<td>Agreement to defer income</td>
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<tr>
<td>Advance medical directives</td>
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<tr>
<td>Powers of attorney</td>
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<tr>
<td>Nuptial agreements</td>
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</tr>
<tr>
<td><strong>13. Insurance status</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Life insurance</td>
<td>☐</td>
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</tr>
<tr>
<td>Health insurance</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>Long-term care insurance</td>
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<td>☐</td>
</tr>
<tr>
<td>Disability income insurance</td>
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</tr>
<tr>
<td>Annuities</td>
<td>☐</td>
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<tr>
<td>Group insurance</td>
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<tr>
<td>Other employer plan</td>
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<tr>
<td>Property insurance</td>
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<td>Liability insurance</td>
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<tr>
<td>Change of plan</td>
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</tbody>
</table>

*Checklist concludes on next page.*
FIGURE 8-1 (Continued)
Checklist for Estate Planning Review

<table>
<thead>
<tr>
<th>Change in</th>
<th>Has Occurred</th>
<th>Is Expected</th>
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<tbody>
<tr>
<td>14. Attitudes toward others</td>
<td>□</td>
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<tr>
<td>In family</td>
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<td>In business</td>
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<td>In accepting professional advice</td>
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<tr>
<td>15. Interest in</td>
<td>□</td>
<td>□</td>
</tr>
<tr>
<td>Idea previously discussed</td>
<td>□</td>
<td>□</td>
</tr>
<tr>
<td>Plans seen or heard about</td>
<td>□</td>
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</table>

Keep Good Records. Record keeping is extremely important. Keeping good records will shorten your preparation time for the review and enable you to present a more professional image. It will boost your confidence, which will, in turn, enhance your credibility with clients.

Make sure that your records contain information about the client’s family and personal interests to help you reestablish rapport and further the client-advisor relationship. You should update any information on your client’s investment performance, insurance values, retirement plan values, and the like. In addition, you should maintain records of insurance coverage renewal dates and keep copies of your client’s recent income tax returns.

Financial services companies today have file inspection and maintenance requirements as a routine part of the compliance process. In all cases, follow your company procedures, which may require that you keep records of such things as the following:

- fact-finding forms
- written notes describing the basic events and discussions with the client
- contact log with dates and topics discussed
- copies of quotes or illustrations
- copies of applications and related materials
- copies of correspondence with the client

Generally, no original documents or blank signed documents should be in a file. Original documents should be submitted to the company; blank signed documents are strictly forbidden.

Confirm the Appointment. Call to confirm the appointment. You can let your client know at this time what documentation he or she may need to bring to the review. If you are making changes to the client’s disability income plan, for example, you will need him or her to bring a W-2 form and a Social Security benefit statements to the meeting. You may also need to ask
Resistance to Reviews

Your client may display resistance to scheduling a periodic plan review, or even to hearing from you. Responses such as “Why are you calling me?” or “I’m not ready to buy anything else right now” can be disappointing and unnerving when you are sincerely trying to provide good service for its own sake. The reason for this kind of response is that your client perceives that your sole motive is to earn another fee or commission. You must change your client’s perception.

You should contact your client at least annually to touch base and say “Hi,” to wish him or her a happy birthday or anniversary, or for some other reason that is unrelated to the financial services business. Some successful advisors who do this refuse to discuss business at all, even if the client raises the topic, so that the message is that this is clearly a relationship call, not a business call.

Your client’s perception should be that you care about him or her as a person; your contact is sincere. As you plan your calendar, see that every one of your clients has contacts from you to build the relationship and show you care.

Of course, besides social contacts, there should be periodic reviews to make sure your client’s plan is still on target and reaching his or her goals. Therefore, each year, you should schedule two kinds of visits to your clients— one geared toward service and the other toward strengthening your personal relationship with him or her.

Keeping good records will shorten your preparation for the review and enable you to present a more professional image.

your client to bring other information such as tax returns, investment performance statements, and employee benefit and retirement plan annual statements to the review.

If you have not set the appointment in advance, you can treat this as you would a prospecting call, except, of course, that you already have a relationship with the client. Some advisors send a preapproach letter to remind the client of the review and monitoring service that they offer and then follow up with a phone call to set a date for the appointment.

Prepare for the Appointment. If you have kept good records, preparing for the appointment will be much easier. Refresh your memory by reviewing the fact finder. Reexamine the information you gathered on your client’s attitudes, values, and goals. Review plan recommendations: Which were implemented? Which were not? Why were recommendations not implemented? Put together a game plan of areas where you feel client needs may exist.

Conduct the Review. Review the client’s estate plan, and evaluate the plan’s progress in relation to your client’s goals. If appropriate, recalculate needs and note any shortfalls. Using a client-focused selling approach, inquire about any changes in your client’s current or future personal or financial situation. Listen carefully and note any planning opportunities. Implement any plan changes and/or arrange for any necessary follow-up appointments.
Ask for Referrals. A periodic review is a perfect opportunity to ask your client if he and she knows anyone who shares the client’s same values and goals. There is a high probability that your client trusts you; otherwise, your client would not have agreed to have you review his or her estate plan. Therefore, it is likely that your client realizes your value and the value in what you do and will want to refer you to family and friends. You do not become referable by selling a product. You become referable by providing excellent and dedicated service that demonstrates your trustworthiness, professionalism, and competence.

<table>
<thead>
<tr>
<th>Your Financial Services Practice: Unauthorized Entities</th>
</tr>
</thead>
<tbody>
<tr>
<td>Regulation of insurance products and services varies from state to state. In Florida, for example, regulations prohibit doing business with an unauthorized insurance entity. An unauthorized entity is an insurance company that has not gained approval to place insurance in the jurisdiction where it or a producer wants to sell insurance. These carriers are unlicensed and prohibited from doing business in that state. In most cases where these carriers have operated, they have characterized themselves as one of several types that are exempt from state regulation. It is the financial advisor’s responsibility to exercise due diligence to make sure the carriers for whom they are selling are approved by the department of insurance in that state.</td>
</tr>
</tbody>
</table>

CHAPTER EIGHT REVIEW

Key Terms and Concepts are explained in the Glossary. Answers to the Review Questions and Self-Test Questions are found in the back of the textbook in the Answers to Questions section.

Key Terms and Concepts

- guardian of the person
- guardian of the property
- supplemental security income (SSI)
- informal trust
- luxury (restricted) trust
- discretionary trust
- Sec. 2503(b) trust
- Sec. 2503(c) trust
- Uniform Gifts to Minors Act (UGMA)
- Uniform Transfers to Minors Act (UTMA)
- kiddie tax
- incentive trust
- qualified domestic trust (QDOT)
- altruism
- compliance
- ethical behavior
Review Questions

8-1. Identify the estate planning needs of minor children.

8-2. Explain the estate planning needs that are relevant to divorce and remarriage.

8-3. Discuss the estate planning needs of children with special needs.

8-4. Discuss the types of trusts used with minors.

8-5. Explain the special estate planning considerations that pertain to noncitizens.

8-6. Discuss estate planning issues for different life stages and living arrangements.

8-7. Identify the issues in working ethically with other professional advisors.

8-8. Discuss professionalism for the financial advisor.

8-9. Discuss the ethical issues that the estate planner faces.

8-10. Identify the characteristics of excellent client service.

Self-Test Questions

Instructions: Read chapter 8 first, then answer the following questions to test your knowledge. There are 10 questions; circle the correct answer, then check your answers with the answer key in the back of the book.

8-1. Which of the following statements concerning the transfer of wealth to a child is correct?

(A) UGMA trusts can have an unfavorable impact on a student’s eligibility for financial aid.

(B) If a client gives money to a child through an UGMA trust and acts as custodian, the value of the account is not included in his or her estate.

(C) The kiddie tax applies to children until they reach age 21.

(D) Setting restrictions on a Uniform Gift to Minors account can ensure that account proceeds are used for education expenses.

8-2. Which of the following statements concerning a guardian of the property is correct?

(A) He or she is appointed by a trust to manage trust assets.

(B) He or she is responsible for the supervision and physical welfare of a minor or ward.

(C) He or she is responsible for managing a ward’s (child’s) assets.

(D) He or she holds title to the property of a child’s trust.

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8-3. Which of the following trusts requires income from the trust to be distributed annually?

(A) Sec. 2503 (b) trust  
(B) Sec. 2503 (c) trust  
(C) UGMA trust  
(D) UTMA trust

8-4. Which of the following statements concerning professional and ethical behavior in estate planning is correct?

(A) The advisor should be prepared to give legal opinions and advice when working with estate plans.  
(B) Compliance means following the rules for the sale of financial products.  
(C) If an advisor has an insurance or NASD license, the advisor can identify himself or herself as a financial planner.  
(D) An advisor holds no fiduciary position regarding the client.

8-5. Which of the following statements regarding supplemental security income (SSI) is correct?

(A) Only earned income is considered to determine eligibility for SSI.  
(B) Only qualification for disability benefits is needed for eligibility; financial eligibility is not considered.  
(C) The assets of a trust established for an individual are considered in the eligibility calculation.  
(D) A person must meet the Social Security definition of disability and certain “means” (financial) tests of income and assets.

8-6. Which of the following statements regarding naming a guardian for a minor child is correct?

(A) The guardian of the deceased’s surviving children must be the same person named as guardian of the property left to those children.  
(B) The laws governing guardianship vary by state.  
(C) Generally, a guardian for a decedent’s minor children is appointed by the decedent’s will.  
(D) A guardian of the person has the fiduciary responsibility for managing the ward’s property.
8-7. Which of the following statements concerning the estate planning implications for two unrelated adults who live together but are not married to each other is (are) correct?

I. Although a surviving spouse automatically inherits all or a portion of the estate, cohabitants typically do not have this protection.
II. The advisor should encourage unmarried cohabitants to create wills to handle the transfer of property at death.

(A) I only
(B) II only
(C) Both I and II
(D) Neither I nor II

8-8. Which of the following statements regarding naming a minor child as a life insurance beneficiary is (are) correct?

I. Generally, minor children cannot legally accept the proceeds of a life insurance policy.
II. Naming a guardian for minor beneficiaries in a life insurance policy will allow payment of the proceeds without the appointment of a legal guardian.

(A) I only
(B) II only
(C) Both I and II
(D) Neither I nor II

8-9. All the following statements regarding resident aliens (noncitizens) are correct EXCEPT:

(A) The property of nonresident aliens located in the United States is subject to both federal estate and gift taxation.
(B) The unlimited marital deduction is unavailable to a surviving spouse who is not a U.S. citizen.
(C) A qualified domestic trust (QDOT) can be used to transfer assets from a noncitizen spouse to a surviving resident-alien spouse.
(D) Resident aliens are noncitizens who reside or are domiciled outside the United States.
8-10. Ethical dilemmas for members of estate planning teams arise from all the following issues EXCEPT

(A) confidentiality
(B) lack of a code of ethics
(C) conflicts of interest
(D) compensation

NOTE

plan, your role becomes twofold: managing implementation and meeting your responsibilities as a life insurance advisor. In many cases, you may have had contact with the prospect’s advisors. If not, get your prospect’s permission to contact them. Share with them the reason you are recommending that the prospect meet with them and stress the importance of coordinating all parts of the plan. Maintain close communication with the prospect to keep your action list updated and to add to it any new tasks that must be completed to fully implement the plan. You also have a role as one of the professional advisors. If you have made an insurance recommendation and the client wishes to implement it, your responsibility is to see that the recommended insurance is properly applied for and issued. In addition to reviewing the remaining action steps, you should also look ahead to your continuing relationship with your client. Like all insurance and financial planning, estate planning needs follow-up. People’s needs and situations change, and estate planning clients, like all of your other clients, need annual reviews. More often than not, the initial plan will not meet all of the client’s needs.

If there are outstanding needs that have not been met in the original plan, you need to set the stage for addressing those needs. Review the client’s situation and some of the needs that are still unmet. To do that, review the unmet priority and move toward meeting it.

Answers to Self-Test Questions

7-1. A  
7-2. B  
7-3. B  
7-4. A  
7-5. C  
7-6. B  
7-7. D  
7-8. C  
7-9. C  
7-10. D

Chapter 8

Answers to Review Questions

8-1. The primary goal of estate planning is to make sure that a person’s assets are distributed according to his or her wishes, especially when these survivors include young children or other dependents. One consideration for parents of dependent children is the potential of a common disaster. If both parents are killed in a common accident, provision must be made for their children. A difficult decision parents have to make is who should have custody of their children in the event of their deaths. Children are not property that is passed from one owner to another, and even parents who have little concern for the distribution of assets will want to give thought to who will raise their children if they are unable. The wills of both wife and husband should be coordinated and in agreement as to who should serve as the guardian of the surviving children. Make sure that beneficiary designations of the parents’ life insurance policies are in agreement with their wills. By helping parents focus on the need to plan for the care and custody of their children, you set the stage for directing their attention to other needs.

8-2. As a result of divorce, custody of the children may be assigned to one or the other of the natural parents, or custody may be shared. This creates special planning needs, especially as parents remarry and begin second families. It is not uncommon for a person to have minor children from more than one marriage. Both parents need to have a clear understanding about what happens with the custody of the children in a divorce situation. Because divorce often carries strong emotions with it, these are difficult but important areas to explore and should be part of the overall planning that is considered when working with families with minor children.

8-3. Families with children with special needs—children and/or adults with physical or mental challenges—are faced with unique planning problems. Working with them requires special care and sensitivity as well as an understanding of the programs available to people with disabilities to avoid disqualifying them from available benefits. When necessary, the care, supervision, and support required are often provided by parents for as long as they are able. In anticipation of their deaths, however, the continued care of their children is a major concern and they will want to provide for their financial security and physical well-being. Given the high cost of care,
qualifying a child for government benefits can often be a planning goal for parents of special needs children. Accomplishing this goal requires familiarity with local laws and the implementation of carefully drafted plans.

As an estate planning issue, meeting the needs of physically or mentally challenged dependents requires special planning in government benefits, cost-of-care issues, and family considerations. Parents must structure their estate to use the property for the direct benefit of the child without exposing it to the state’s claims. To accomplish this, parents may create an informal trust, a luxury or restricted trust, or a discretionary trust.

8-4. Gifts can be made to minors by transferring property to a guardian under the Uniform Gifts to Minors Act (UGMA) or the Uniform Transfers to Minors Act (UTMA). Because UGMA restricts the kind of property that can be transferred, most states have adopted UTMA. These custodial gifts are used because they are simple, they offer the benefits of management and income shifting, and they include the investment characteristics of a trust with little or none of the document drafting costs. There is no court supervision of UGMA or UMTA accounts.

A Sec. 2503(b) trust requires an annual distribution of income. A Sec. 2503(c) trust does not. The trustee is given no discretion regarding income accumulation in a Sec. 2503(b) trust. In a Sec. 2503(c) trust, the trustee can be given broad discretion. In a Sec. 2503(b) trust, principal can be distributed whenever the agreement specifies. It can be paid when the donee reaches 21, or can be held for as long as the beneficiary lives or for a shorter period. Principal can also bypass the income beneficiary entirely and go to individuals whom the grantor or beneficiary selects. A Sec. 2503(c) trust requires that principal be distributed when the donee reaches age 21 (or at a later age if the donor stipulates). A Sec. 2503(b) trust can control disposition of trust assets if the minor dies before receiving the trust assets; assets do not have to be paid to a minor’s estate or appointees. With a Sec. 2503(c) trust, income and principal go to the beneficiary’s estate or appointees if the minor dies before age 21. Almost any type of property can be used in a Sec. 2503(c) trust. The type of property gifted under UGMA must be permitted by statute. With a Sec. 2503(c) trust, the donor can provide for disposition of trust assets. Disposition of trust assets must follow statutory guidelines under UGMA. The trustee can be given broad investment powers under a Sec. 2503(c) trust. Under UGMA, investment powers are limited by statute. A Sec. 2503(c) trust can continue after the beneficiary is 21 and the trustee can distribute assets between the state law age of majority and age 21. Trust assets must be paid to the beneficiary when he or she reaches majority under UGMA.

8-5. Resident aliens are noncitizens who reside in the United States. Their property is subject to the estate and gift tax laws no matter where it is located. In general, resident aliens are subject to the same gift and estate tax rules as citizens, but the unlimited marital deduction is unavailable to a surviving spouse who is not a U.S. citizen. Also, gifts made prior to becoming a resident may be included in the resident alien’s gross estate. The property of nonresident aliens located in the United States is subject to both federal estate and gift taxation. Only the first $60,000 of property is free of transfer taxes. The unlimited marital deduction is available if the surviving spouse is a U.S. citizen. If the surviving resident-alien spouse does not obtain U.S. citizenship, a qualified domestic trust (QDOT) can be used to transfer assets to a surviving resident-alien spouse while preserving the marital deduction for such transfer. A QDOT is a unique transfer vehicle for marital deduction transfers to surviving resident-alien spouses. The complex nature of this area requires the advice of an experienced estate planner. The unlimited marital deduction is not available for a spouse who is a noncitizen unless the noncitizen spouse becomes a citizen prior to filing the deceased’s federal tax return or the property is passed to a QDOT. The requirements for a QDOT are: the election for the QDOT must be irrevocable, the trust must have at least one trustee who is a U.S. citizen and who has the right to withhold any estate taxes due, and transfer of property to the trust must otherwise be eligible for the marital deduction.

8-6. For seniors and incapacitated individuals, although the normal emphasis of an estate plan is the distribution of property to the estate owner’s heirs with the least tax liability, often the preservation of assets during lifetime is of far greater importance to the client than after-death issues. Preparing for the future financial and long-term care needs of senior, ill, and incapacitated individuals presents estate planning challenges. One possible solution is long-term care insurance (LTCI). Trust arrangements and durable powers of attorney are two devices that allow a client to have continued asset management despite incompetence. The trustee manages the trust property in accordance with the client’s directions established in the trust.

In planning with a married couple, the advisor should be aware that the interests of a husband and wife may not be identical and may even conflict. One advisor may not be able to fairly address the needs of both parties. Estate considerations also arise if spouses separate and divorce. In this situation, it is advisable, if possible, for each spouse to have an attorney or other professional advisor review the estate plans of both persons. This allows
both individuals to plan more effectively for the benefit of any children. Both former spouses should also execute new wills, even if their intentions upon death remain the same.

The estate planner needs to recognize when planning for singles that their estate planning objectives and needs are likely to be somewhat different from the goals of married couples and two-parent family households. As nontraditional living arrangements become more common, with different financial issues emerging, it is important to review the financial aspects of these relationships. Unmarried couples face many legal difficulties. Estate tax laws are also more favorable for married couples. There is no unlimited marital deduction and state inheritance taxes on money passed from one unmarried partner to the other are not as favorable. For unmarried persons, the unavailability of the unlimited marital gift and estate tax deduction is the greatest tax planning hurdle to overcome in estate planning. Those who live together can also enter into cohabitation agreements. Such agreements can give structure to the living arrangements and may reduce the likelihood of palimony litigation if the relationship later dissolves. The presence of children adds to the complexity of estate planning for clients living in nontraditional arrangements. For unmarried couples, there are several useful strategies involving joint tenants with rights of survivorship, gifting, testamentary bequests, revocable trusts, and life insurance plans.

8-7. The estate planning process involves developing relationships with other professionals and clients in order to create effective estate plans. If clients have existing relationships with other advisors, it is your job to identify these advisors as early as possible in the relationship. However, you should never contact a prospect’s advisors without first getting his or her permission. Attorneys and accountants, like you, have a responsibility to keep the information they have about a client confidential. Don’t expect them to be any more willing to discuss a client’s affairs than you would be. Sometimes you will find that you and the advisors do not fully agree on the plan you are proposing. Your first selling job may be to the advisors. Ask for their opinion. Get their input on how they think the problem should be solved. Listen to what they have to say. Find the common ground between you and them. Under no circumstances should you make negative comments about the other advisors to your prospect.

8-8. To be professional means that you must have the technical knowledge necessary to provide support and advice to your prospects and clients. You must have a thorough understanding of your products. You must comprehend the problems that face your prospects and clients and how your products can be used appropriately to solve those problems. In estate planning, you must be conversant with the legal and tax consequences of the recommendations you make and be able to outline the positive and negative implications of the various planning tools so your prospects and clients can make informed choices about their options. A career in the life insurance and financial services business carries with it a tremendous responsibility. You talk to and advise others about protecting and improving their financial security. You offer recommendations which can affect families, individuals, or business owners in every aspect of their lives. You are in a fiduciary position; you offer professional advice about financial matters and are expected to act in the client’s best interest. In doing so, you have an absolute obligation to maintain the highest ethical standards. It is this responsibility, combined with the specialized training and knowledge required to be in this career, that raises financial services sales to the professional level.

8-9. The common areas where ethical issues arise are:

- Are the proposed solutions fair? (Does everyone get what is owed to them?)
- Do the practices meet the agent’s responsibilities and obligations? (What does the agent owe, and to whom?)
- Are the practices honest? Lying to clients is not justified. According to the law of agency, the agent has a duty to act solely for the benefit of, and in accordance with, the directions of the client. The agent is a fiduciary of the client and, as such, occupies a special position of trust that imposes on the agent a duty of loyalty to the client.
- Do the actions harm any stakeholders? (Almost no practice is without some harm. The ethical resolution is to find the least harmful practices.)

Confidentiality is important because the planner needs to know all of the pertinent information about the client, but the right of the privacy means this should be kept confidential. Conflicts of interest can occur when the interests of one party are at odds with the interests of another. As a professional, the planner owes it to his or her client to be as competent as possible because the planner is the expert. The planner works in the delicate area of financial services where integrity and honesty are crucial for success and to cultivate the mutual trust necessary to carry out complicated financial transactions. Compliance with the law requires that honesty is imperative. Planners must further communicate with, and cooperate with, clients and other planners to make sure the best job is being done.
8-10. Servicing the plan means two things. The first is monitoring the progress of the plan. The second is delivering promised services to the client. After the plan is implemented, you should periodically review its progress in solving your client’s problems and/or achieving your client’s goals. Together, the financial advisor and client must define their monitoring responsibilities. As the advisor, you must clarify and define your role in the monitoring process. Monitoring responsibilities may include but are not limited to identifying changes in conditions that would affect the current plan and existing recommendations, obtaining information from the client to determine changes in personal circumstances, reviewing work done by other professionals or providers, and evaluating the client’s progress toward achieving financial goals.

Answers to Self-Test Questions

8-1. A
8-2. C
8-3. A
8-4. B
8-5. D
8-6. B
8-7. C
8-8. C
8-9. D
8-10. B