

# Protecting the Story of a Lifetime

## Estate Planning Resources

By Jennifer J. Schafer

**E**verybody's got a story to tell. Some have lived fabulously wealthy and interesting lives, while others have toiled quietly or favored simplicity. The one thing that all life stories have in common is that they will come to an end. The difference is whether they will end in a sad, disorganized mess or whether the best parts of the life story will be preserved, protected, and passed on to the next generation. That's what estate planning is all about.

If you've been thinking about focusing more of your practice on estate planning, there are vast and varied resources available to you. For Michigan lawyers, the starting point for any brave new foray into a previously unfamiliar practice area should always be the Institute for Continuing Legal Education (ICLE).<sup>1</sup> ICLE's estate planning resources can be found in online books, on-demand seminars, sample forms, and how-to kits. The best overview of the entire practice area is probably found in the *Michigan Estate Planning Handbook*,<sup>2</sup> which leads you through all the basic components of any estate plan: wills, trusts, durable powers of attorney, and long-term care planning. Once you're comfortable with the basics, ICLE has several additional resources to assist you in more specific areas such as revocable grantor trusts, guardianships and conservatorships, retirement benefits, and Medicaid planning, as well as books covering the administration of an estate after death. You should also review the resources available through the State Bar of Michigan's Probate and Estate Planning Section.<sup>3</sup>

Another avenue to find relevant law, legal forms, current trends, and educational resources for estate planning is Findlaw,<sup>4</sup> which has two entire sections dedicated to estate planning—one for the public at <http://estate.findlaw.com> and one for profession-

als at <http://www.findlaw.com/01topics/31probate/index.html>. (It's okay to go to the easier-to-understand public section first; we all do it.) Another good portal for online estate planning links of all kinds can be found through Cornell University Law School at [http://topics.law.cornell.edu/wex/Estate\\_Planning](http://topics.law.cornell.edu/wex/Estate_Planning). And for more resources and networking (in addition to joining the SBM Probate and Estate Planning Section, of course) you might consider joining the American Bar Association Section of Real Property, Trust and Estate Law<sup>5</sup> or the American Association of Estate Planning Attorneys.<sup>6</sup> Last but not least, you can find interesting estate planning news tidbits in the blog maintained by Texas Tech University School of Law Professor Gerry W. Beyer at [http://lawprofessors.typepad.com/trust\\_estates\\_prof/](http://lawprofessors.typepad.com/trust_estates_prof/).

Whether you're new to the estate planning field or have been practicing for 40 years, recent legislation has rewritten almost everything we know (or didn't know). Within just the last few years, the Estates and Protected Individuals Code, MCL 700.1101 *et seq.*, overhauled Michigan's entire probate code, and the Michigan Trust Code, MCL 700.7101–700.8206, created a new and comprehensive trust administration code.<sup>7</sup> And in December 2010, Congress passed the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, which raised the federal estate-tax exemption to \$5 million, at least for 2011 and 2012.<sup>8</sup> For the first

time in a long time, your more fortunate clients can make gifts to children and grandchildren (and anyone else) during their lifetimes in the same amount they can transfer at death, tax-free.<sup>9</sup> Even if this higher tax exemption is retained after 2012—which is still very much up in the air—estate planning isn't just about avoiding taxes. Estate planning should always be considered to ensure the orderly management and distribution of assets, both in life and after death. Regardless of the size of the estate, the goal of estate planning is to preserve the story of a lifetime and pass it along to the next generation with minimal disputes and distress.

To help your client plan his or her estate, you need to understand what—and who—is most important to them. It may no longer be the standard “spouse and children” arrangement you expect. For example, if you're assisting a nontraditional couple in planning their estate, you'll need to learn which states recognize same-sex marriages and domestic partnerships and how the Defense of Marriage Act<sup>10</sup> and other state laws might impact the estate plan. Or you may have a client who wants to plan for a favorite pet; it's actually possible to set up a pet trust.<sup>11</sup> Whatever the client's story, the creative estate planner can find ways to help protect it and pass it on to the client's intended beneficiaries.

During the planning stage, it's also important to remind clients to consider what they want their loved ones to know after

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they're gone. A letter of instruction may be one of the most important documents in the estate planning portfolio to give the client true peace of mind. The letter of instruction should be created at the same time as a will, a trust, a health care power of attorney, or any other estate planning document, and it serves two purposes: it lets loved ones know what the client's final wishes are regarding funeral, burial, and memorial services and it provides critical information that the client wants the loved ones to know to be able to move on. This critical information can include:

- The location of deeds and titles as well as the remaining estate planning documents
- The location of safety deposit boxes or safes along with their keys or combinations
- A list of bank accounts, investment accounts, retirement plans, and insurance policies with account numbers and contact information
- A list of credit accounts, loans, or other debts
- The keys to the client's digital life

What's that last one? A recent *Money* magazine article<sup>12</sup> reminds us that we live much of our modern lives online—we pay bills online, store photo collections online, and keep e-mail accounts with communications and information located nowhere else. We all know how frustrating it is when we forget our own usernames and passwords; imagine that frustration compounded by grief and the pressing need to get someone else's finances in order, and the client can be easily convinced of the importance of gathering this information for his or her loved ones.

In estate planning, your client is the storyteller; your job is to be a good listener. Pay attention to the details and help your client refine the story and decide which parts are most important and how the story should end. Your goal is to create a plan that effectively passes the best parts of the story to the client's preferred beneficiaries with the least amount of emotional and financial expense. There are plenty of resources to assist you

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#### FOOTNOTES

1. ICLE's online site can be found at <<http://www.icle.org>>. All websites cited in this article were accessed July 8, 2011.
2. Michigan Estate Planning Handbook (Carol J. Karr, ed, ICLE 2d ed 2006).
3. The State Bar of Michigan's Probate and Estate Planning Section is found online at <<http://michbar.org/probate>>.
4. <<http://www.findlaw.com>>.
5. <[http://www.americanbar.org/groups/real\\_property\\_trust\\_estate.html](http://www.americanbar.org/groups/real_property_trust_estate.html)>.
6. <<http://www.aoepa.com>>.
7. The text of these statutes can be found at <<http://www.michiganlegislature.org>>. There is an excellent EPIC Q&A site that is maintained through the efforts of Hon. Phillip E. Harter of the Calhoun County Probate Court and the SBM Probate and Estate Planning Section; the site is at <<http://www.icle.org/modules/probatesection/epic/>>. Additionally, the Winter 2009 Michigan Probate & Estate Planning Journal contains a good primer on the MTC at <<http://michbar.org/probate/pdfs/winter2009.pdf>>.
8. Pub L No 111-312, 124 Stat 3296 (2010). The text of the act can be found at <<http://www.gpo.gov/fdsys/pkg/PLAW-111publ312/pdf/PLAW-111publ312.pdf>>.
9. See Chardoul, *Estate Planning: Reacting to the New Law*, 30 Mich Prob & Est Planning J 2 (Spring 2011), available at <<http://www.michbar.org/probate/pdfs/spring11.pdf>>.
10. The Defense of Marriage Act, PL 1-4-199, 110 Stat 2419 (1996); 1 USC 7, 28 USC 1738C; see also Const, art I, §25; MCL 551.1 *et seq*.
11. See <[http://www.bankrate.com/cnbc/news/financial\\_literacy/family\\_finances/financial\\_planning\\_for\\_dogs\\_cats\\_a3.asp?care=134c](http://www.bankrate.com/cnbc/news/financial_literacy/family_finances/financial_planning_for_dogs_cats_a3.asp?care=134c)>.
12. <<http://money.msn.com/retirement-plan/do-not-take-passwords-to-the-grave-weston.aspx>>.