E-BOOK

# The basics of estate planning

An easy-to-understand introduction to protecting your assets and ensuring your legacy

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## SECTION 1:
# Examining the ABCs of estate planning

Estate planning is a topic that few people want to think about, although everyone needs to understand at least the basics of what an estate plan is, how it works and who they can go to for assistance.

The unfortunate reality is that when you die or become incapacitated, you can no longer give instructions to your family or friends about your financial and non-financial desires. This means they could be left without clarity on important considerations like:

- Who will manage your money and property?
- Who are the beneficiaries of your assets?
- How much should each beneficiary receive and when should they receive it?
- Who will take over your business and what will happen to it?
- How will taxes be paid?
- How will your family share the vacation home?
- Who will take care of your minor children?
- Do you want to be buried or cremated?
- Do you have funeral arrangements and how will they be carried out?

Of course, addressing these issues should take place before you die. The process of doing so is known as estate planning, which is the focus of this e-book.

Having an estate plan is the best way to protect and preserve your legacy.

“You want to have a positive, lasting legacy,” says Randi Schuster, one of several estate planning specialists at Baker Tilly. “Not one clouded by fighting or confusion.”

## ESTATE TAXES, SIMPLIFIED

The estate tax is a tax paid for your right to transfer wealth at your death. It applies only if you transfer assets worth more than the estate tax exemption to non-spouse or non-charitable beneficiaries. For 2022, the estate tax exemption is $12.06 million per person, or $24.12 million for married couples. This is the amount you can gift during your life or die with without being subject to estate tax. Wealth over that amount is taxed at 40%.

Under current law, the estate tax exemption will be cut roughly in half at the end of 2025 and, of course, Congress could make changes sooner. Therefore, if your estate value exceeds the current estate tax exemption, you should consider lifetime gifts to use the exemption before part of it expires.

“If you have a taxable estate, you have to consider how you are going to minimize your potential estate tax liability,” says Baker Tilly’s Michael Lum. “At the end of the day, your assets can go into one of three buckets: the government, charity, and your family and friends. The question is how much do you want to go to each bucket?”

Naturally, most people want to maximize what goes to their family and friends and minimize what goes to the government. A proper estate plan can help you achieve that goal.

## WHAT’S IN AN ESTATE PLAN?

A basic estate plan consists of a will and oftentimes a living trust, along with other ancillary documents such as health and financial powers of attorney and living directives.

Both wills and trusts are documents that speak for you when you can no longer speak for yourself, but there are important differences that many people don’t recognize.

“Between living trusts and wills, people don’t really understand which one they need,” says Baker Tilly’s Ryan Bray. “There’s a lot of confusion out there.”

## WHAT'S A WILL?

A will is a legal document that expresses your intentions for the administration and distribution of your wealth upon your death. A will can dispose of assets big and small—everything from the family china to the multimillion-dollar mountain home to the family business. A will also can provide instructions for the care of dependents and pets. A will can create trusts upon your death, which in turn can protect assets from a beneficiary's predators and creditors. And a will can help ensure disinherited family members don't receive assets or have a say in the administration of your estate. Essentially, a will gives you a certain level of control, even after death.

Without a will, the laws of your home state will dictate who gets your property and who takes care of your dependents. However, your state's default estate plan is likely not the one you would've chosen. Not to mention that dying without a will can cause family conflict, additional expense and financial complexities.

That said, for all that a will does, there are some things that a will *doesn't* do.

A will doesn't dispose of joint tenancy property, money in paid-on-death accounts, assets in a living trust, or assets with beneficiary designations. Those assets pass by contract or by beneficiary designation outside of what your will says. Also, a will does not avoid probate (the sometimes lengthy and expensive court-supervised process whereby assets in your name are transferred to your beneficiaries).

## DIGGING DEEPER INTO TRUSTS

While many of our clients are familiar with wills, confusion oftentimes accompanies trusts.

"I think there's a lot of misconceptions about what a trust is and what it does," noted Baker Tilly's Scott Burack. "A lot of people think it's some sort of tax savings device, while a revocable trust is actually just another way of passing down your assets."

At a high level, the two basic types of trusts are revocable trusts and irrevocable trusts. As the name suggests, a revocable trust can be freely amended or revoked by the creator (or grantor) any time before the grantor's death or incapacity. An irrevocable trust, on the other hand, generally cannot be amended or revoked, although under certain circumstances modifications may be made under state law or by court order.

When it comes to trusts, you have a variety of options to choose from, ranging from the basic to the more complicated. Some options include:

**Revocable trust:** These trusts serve as substitutes for wills. With a revocable trust, your wishes for administering and disposing your assets are incorporated in the trust document instead of a will. Revocable trusts form the core of most estate plans, even the most sophisticated ones. The reason for this is that, when appropriately funded, these trusts are great for avoiding probate (including the time, expense and lack of anonymity) and planning for potential incapacity. More sophisticated planning can be used in conjunction and in coordination with the revocable trust.

**Annual exclusion trust:** These *irrevocable* trusts are used by those who wish to give up to the annual tax-free gift amount, but also wish to stipulate how that money will be spent. These trusts are common among those with minor children. As noted above, the annual tax-free gift amount (or annual exclusion amount) in 2022 is $16,000 per beneficiary. This amount is doubled ($32,000) for married couples.

**Grantor retained annuity trust (GRAT):** A GRAT is an *irrevocable* trust in which you retain an annuity interest for a period of time (generally two to five years), after which any remaining property transfers to your beneficiaries. Due to the way most GRATs are structured, they can be great vehicles for shifting asset appreciation from your estate to your beneficiaries at little or no gift tax cost.

**Spousal lifetime access trust (SLAT):** A SLAT is an *irrevocable* trust that married couples can use to gift assets to one another. SLATs allow each married person to use his or her lifetime gift exemption ($12.06 million) while maintaining indirect access to the gifted assets as long as the couple is married and living. SLATs can be a great alternative to simply gifting assets directly to trusts for children or other beneficiaries because with SLATs, the couple (and not just the children or other beneficiaries) can continue to benefit from the gifted assets.

**Charitable remainder trust (CRT) and charitable lead trust (CLT):** CRTs and CLTs are *irrevocable* split interest trusts designed to pay some portion of the trust assets to charity and another portion to noncharitable beneficiaries. A CRT pays a noncharitable beneficiary (typically the donor) an initial annuity or unitrust interest, after which the remainder is paid to charity. A CLT, on the other hand, does the opposite. It pays an initial lead interest to charity and the remainder to a noncharitable beneficiary. In addition to satisfying charitable intent, gifts to CRTs and CLTs can qualify for an income tax charitable deduction.

**Dynasty trust or legacy trust:** “Dynasty trust” and “legacy trust” are used interchangeably to describe *irrevocable* trusts designed to pass wealth free of gift and estate tax from generation to generation for as long as assets can remain in the trust per state law. These trusts are commonly used by people who want to leave a legacy—uneroded by gift and estate taxes—for many generations to come.

## OTHER IMPORTANT CONSIDERATIONS

In addition to choosing the right type of estate plan, choosing the right executor or trustee is another important consideration. Indeed, it's likely the most important consideration. This is the person who will safeguard your assets and see that your wishes are carried out after you pass. The most eloquently crafted estate plan will not likely accomplish its objective without a qualified executor or trustee.

Some things to consider when choosing an executor or trustee are:

**Family dynamics:** Is there inherent acrimony between the potential executor or trustee and the beneficiaries that might cause them to fight? Can the potential executor or trustee stand up to the beneficiaries' improper requests for funds or otherwise? Could appointing the potential executor or trustee signal favoritism that might, in turn, strain relationships (e.g., appointing one sibling over another)?

**Financial acumen and responsibility:** Does the potential executor or trustee have the financial acumen to handle wealth and make investment decisions? Is he or she a spendthrift?

**Ability to serve:** Does the potential executor or trustee have the ability to serve or is he or she preoccupied with other significant commitments? Is there a possibility he or she will not live long enough given his or her age relative to your beneficiaries? Could the potential executor or trustee lack capacity when the time comes for him or her to serve (as might be the case when appointing parents or older relatives)?

**Trustworthiness:** Ultimately, do you trust this person? As Schuster cautioned, "It has to be someone who you trust to make the right decisions."

Another factor to consider is probate. As mentioned above, probate is a court-supervised process whereby some of your creditors are paid and your assets are distributed to your heirs and beneficiaries after your death.

In some states, this process can be time-intensive and costly, in which case you may want to structure your estate plan to avoid probate.

Probate can be avoided by (1) titling assets in trust, (2) designating beneficiaries on accounts and life insurance, and (3) titling property jointly with rights of survivorship. Note that the latter methods of probate avoidance result in the underlying assets bypassing your will or trust. Thus, it's important to discuss these decisions with your advisors, particularly your estate planning attorney.

## SECTION 2:
# Who needs an estate plan?

> It doesn't matter how much you're worth. Your wealth only determines *what kind* of estate plan you need. Your estate is never too small for an estate plan.
>
> — RANDI SCHUSTER, ESTATE PLANNING SPECIALIST, BAKER TILLY

Estate planning presents an interesting dichotomy, as more than 50% of Americans believe that estate planning is at least somewhat important, but only 1 in 3 Americans actually have a will or trust. In fact, nearly 60% of attendees in a recent Baker Tilly webinar revealed that they do not have a will.

The reasons people give for not having an estate plan include:

- Fear of death or a preference to avoid thinking about death
- Overwhelmed by the process (i.e., time or cost)
- Belief that they don't have enough assets for a will
- Privacy concerns surrounding finances and other personal information
- Unaware of the consequences of not having a will
- No idea where to start the process or who to contact

Before we delve too deep into some matters surrounding estate planning, let's ask the question: Who needs an estate plan?

"Everyone," said Schuster. "It doesn't matter how much you're worth. Your wealth only determines *what kind* of estate plan you need. Your estate is never too small for an estate plan."

Common misconceptions are that only the rich or people who have children need wills, but this isn't true. You should have a will regardless of wealth or posterity. That said, high-net-worth clients generally require additional layers of sophisticated estate planning on top of the basic will and irrevocable trust. For instance, we often work with high-net-worth clients on:

- **Wealth transfer planning:** the most tax efficient plan to transfer significant wealth
- **Business succession planning:** a plan for who takes over your business when you die
- **Philanthropic planning:** a plan that satisfies your long-term charitable objectives and takes into account potential tax benefits and family involvement

Just as the amount of wealth is not a major factor, the importance of having an estate plan also has nothing to do with age. There is no rule that says you need an estate plan when you turn 18, or 21, or 30. Generally, you should create an estate plan once you have a bank account and start saving, or once you've inherited assets.

Yet, so many people don't follow this rule. They work and accumulate wealth for years, if not decades, and still don't have an estate plan.

"There are *so many* of our clients who don't have wills," Bray said.

And that is not a good place to be.

**Simply put, ignoring the need to create an estate plan usually leads to confusion at best, and ugly infighting and lawsuits at worst.**

"If you don't have a plan, then your assets are going to pass the way the government dictates," Schuster cautioned. "For instance, if you're married and you have children, you might think your spouse gets everything. That's not the case in my home state of New York. Your children, even if they're 4 and 2 years old, will inherit assets. And other states are very similar. Of course, that might not be what you want, so people need to be aware."

The repercussions of not having an estate plan are pretty simple to understand. In fact, we see it in the news all the time with celebrities. Or perhaps you even know people who have spent months or years in court fighting with siblings over their parents' assets.

Simply put, ignoring the need to create an estate plan usually leads to confusion at best, and ugly infighting and lawsuits at worst. When you haven't left clear instructions that specifically outline where your assets should go, bad things tend to happen.

"It's a total burden on the successors," Burack said. "It becomes a complete mess."

## SECTION 3:

# Common questions about estate planning

As with any complex topic, estate planning is a matter that generates a variety of questions from Baker Tilly clients. And, needless to say, the level of comfort on the subject varies greatly from individual to individual.

“There’s a huge range of knowledge,” Bray said.

“We have some clients who really understand their estate plan, understand where they want it to go and just need us for fine-tuning,” Schuster added. “And then there are others who really have no idea or have never done it. And we work very closely with them.”

The most common concern shared by our clients, regardless of their level of estate planning knowledge, is a topic that you might expect.

“People want to know how to avoid paying taxes to the government,” Burack said.

Obviously, we address that issue with clients on a case-by-case basis. In fact, we tailor our responses (and our general approach to estate planning) to each person’s individual situation. No two people are the same when it comes to assets, beneficiaries and goals, so we treat every client as truly unique.

We could list 100 questions that we often receive during the estate planning process. Here are some examples:

- What is a trust and how does it work?
- How is a will different from a trust?
- At what age should my children start to inherit money?
- What happens to my money if my spouse remarries?
- How do I protect my assets from future creditors and predators?
- When should I use life insurance?
- Are trusts ethical and am I doing anything wrong by having one?
- When do I need an attorney?
- What tax filings do I need to be aware of?
- Where should I keep my will?
- Who needs to be informed once I die and who informs them?
- What happens to my assets if my wife and I both die?

In the end, the question that might be most pertinent is: Do people really *need to know* all about trusts, wills and estate plans?

"People don't need to become experts," Bray said. "They just need to know who to turn to."

# SECTION 4:
# Mistakes to avoid when forming your estate plan

One of the primary ways that Baker Tilly assists clients with estate planning is by reviewing their existing plans and providing feedback on potential areas of improvement. In effect, we do a “stress test” in which we search for specific parts of the plan that can be strengthened and strategies that can result in additional savings or a smoother overall process.

Of course, in examining hundreds of estate plans every year, Baker Tilly sees many mistakes over and over again. These common pitfalls tend to arise when clients try to compile their estate plan without the help of experienced professionals.

Here are four common mistakes that we see:

## NOT REVISITING THE PLAN

As a general rule of thumb, it is good to review your estate plan every 3-to-5 years, or following a major life event, such as:

- Marriage
- Divorce
- Birth of child or grandchild
- Significant acquisition of assets
- Significant loss of wealth
- Graduation
- Major promotion
- Retirement
- Death of spouse/child

"Once you've done an estate plan, don't just put in a drawer," Schuster cautioned. "It's a living, breathing document and it needs to be changed occasionally. Plus, you might be surprised how much can change in a short period of time."

That mindset applies to life events, but also to another area that people often overlook: tax laws. The federal estate tax exemption and other exemptions are indexed for inflation, so they change every year—and other federal and state tax guidelines can fluctuate as well.

"It's important to monitor any law changes and any life changes," noted Burack.

Additionally, it is important to consistently monitor any necessary updates to your financial plan. These changes may be connected to your financial status, your state of residence and/or employment or your financial goals, among many other factors. Because ultimately your estate plan should factor into your overall financial plan, it is critical to update both consistently and collaboratively.

## NOT INVOLVING THE ACCOUNTANT

Another common issue that we see is people who attempt to create their estate plan by working 1-on-1 with an attorney and not involving their accountant.

Estate planning and taxes go hand in hand. This is especially true for more complex plans. Generally, attorneys don't know the details of your specific tax situation. That's the accountant's job. Thus, it's important to involve your accountant in any estate planning decision to help ensure important tax consideration are not missed.

Additionally, your accountant, with whom you likely deal with more than your attorney, might have more insight into the interpersonal dynamics that are involved with your particular family.

"The relationships are a big part of it—and how money affects those relationships," Lum said. "There's a lot more than money considerations that go into those documents."

## DOING IT ON YOUR OWN

Attempting to create an estate plan entirely on your own (using a service like LegalZoom, perhaps) is another mistake that we hear about occasionally.

While you can find online templates for wills that are valid in your state and execute them on your own, Schuster sees that route as one that ultimately becomes regrettable for most people, particularly those with any significant wealth, or those who have a family.

“As a lawyer, the thought of someone writing their own will bothers me,” she said. “Not only professionally, but because there are specific rules that need to be followed.”

Realistically, there is no way to understand the nuances of the rules and the repercussions for failing to take full advantage of them unless you specialize in estate planning.

“The whole thing is confusing for people because usually you’re not going through this full process more than once or twice in your life,” Bray said. “The reality is that nobody ever becomes an expert in estate planning, unless you work in the field.”

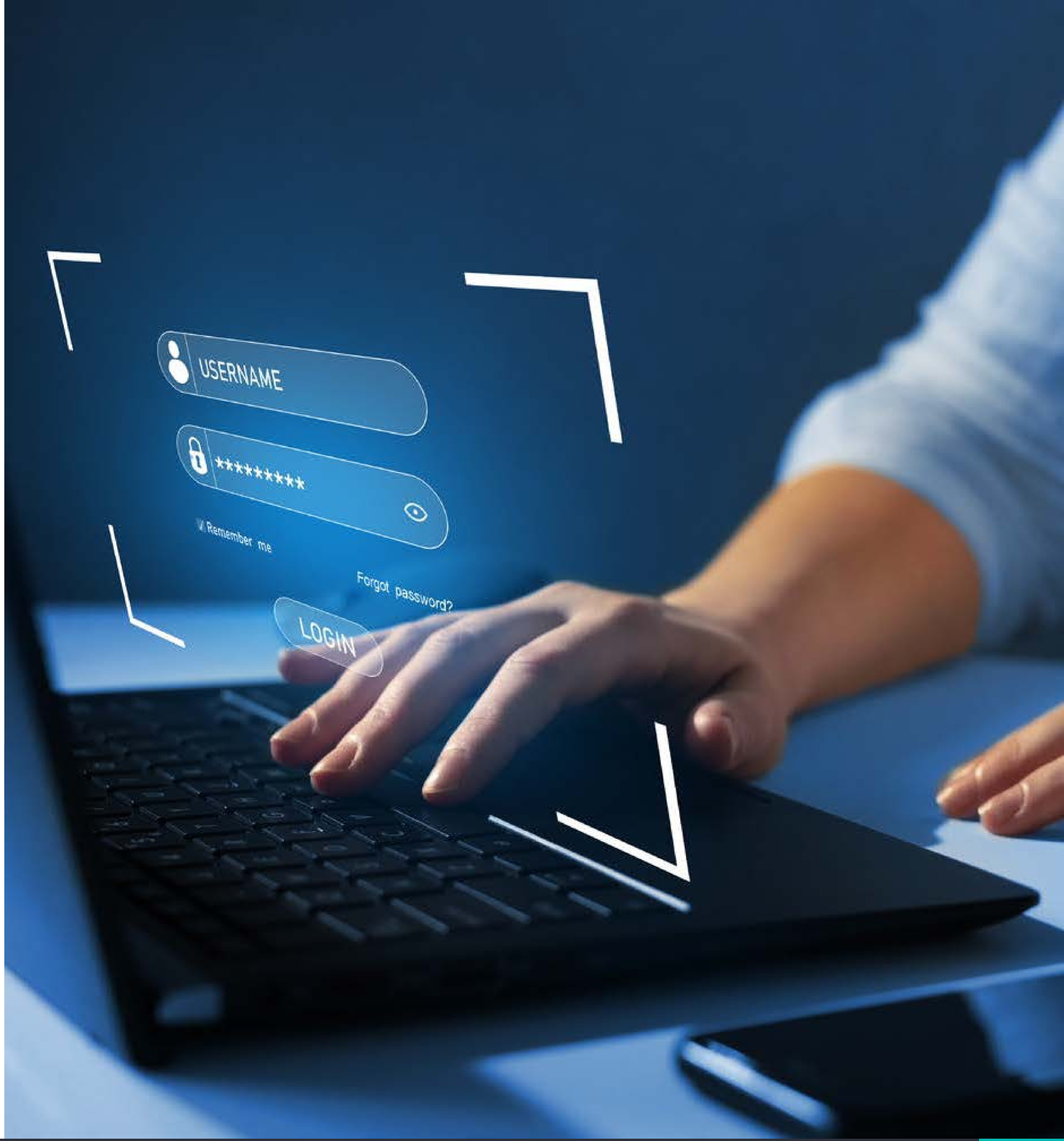
## IGNORING DIGITAL DATA

Although wills and trusts have been around for centuries, other elements of estate planning are significantly more modern.

"Electronic data, passwords, profiles, cell phones, social media—all that stuff on the web," Burack began. "How do you deal with that? Who gets your passwords when you're gone? Who manages your accounts?"

"Getting information when someone dies is one of the hardest things," Bray added. "Especially if you don't have their passwords and you don't have the rights to them."

So definitely consider your personal technology and online presence when composing your estate plan. And, obviously, as passwords change and important accounts are added and removed—something that frequently happens over the course of many years—these details need to be updated in writing as part of your plan.



SECTION 5:

# How can Baker Tilly help?

As one of the 10 largest accounting firms in the U.S., Baker Tilly assists families, business owners and high-net-worth individuals with their estate planning needs. Our team has an impressive depth of specialists who coordinate estate plans that meet the specific objectives of each person, each family and each specific situation.

We have experienced subject matter specialists in every key area—estate planning attorneys, high-net-worth accountants and advisors in areas such as financial planning, state tax planning and business succession. Working together in close collaboration, our estate planning team offers a unique combination of expertise that helps our clients enhance and protect their legacies.

"You really have to think about what you want—and who you want to step into your shoes," Schuster said. "And we can help you with those decisions."

At a high level, the services Baker Tilly provides include:

- Wealth transfer planning and analysis
- Financial planning, including cash flow analysis
- Charitable planning
- Estate administration advice
- Multistate estate planning
- International estate planning
- Asset protection planning
- Valuation services

We begin by meeting each new client to learn about their estate planning goals. We work to understand their assets, which generally requires them to fill out a basic questionnaire and provide us with a personal financial statement.

Along that topic, by the way, it is important to make sure that you, your spouse, your accounting team and other key parties are aware of what you own. That might sound simple, but it's amazing how many times we are left to scramble for a list of assets and other key items once someone has died.

Following the planning meeting, we work diligently to align your estate plan with your goals. We begin that process by focusing on what's important to you (or what *should be* important to you). We show you the various options that are available and then we run projections, depending on the size of your estate, that show you what happens if you choose Course A, Course B, etc.

> **At Baker Tilly, we believe a comprehensive financial plan is the bedrock of estate planning, even for the wealthiest of clients.**
>
> — BILL GRADY, DIRECTOR

## OUR FINANCIAL PLANNING CAPABILITIES

Updating your existing financial plan or creating a new one at the time you begin your estate planning is critical.

"At Baker Tilly, we believe a comprehensive financial plan is the bedrock of estate planning, even for the wealthiest of clients," said Baker Tilly's Bill Grady. "We otherwise don't get the best sense of the projected value of the estate at the second death of two spouses, or a determination as to whether cash flow is sufficient. For clients seeking to use sophisticated estate planning strategies, both aspects of a financial plan—among many other benefits—are essential."

By combining a financial plan with your estate plan, you can rest more comfortably, knowing that you have the highest probability of achieving your goals and objectives.

## WHAT DO OUR CLIENTS NEED?

Generally speaking, Baker Tilly's estate planning clients generally fall into one of three buckets:

- Clients that have an estate plan and want us to review it, stress-test it and provide feedback
- Clients that need to do estate planning from scratch and request our help from the planning and/or tax side
- Clients that own large businesses or have large family groups and come to us every 1-to-2 years for an update of their existing estate plan

Once we crunch the numbers and develop a plan centered around your objectives, we can work in concert with your attorney, financial advisor and other professionals, as desired, to implement a comprehensive plan. And then, of course, we can handle any tax compliance and tax planning needs.

As part of the estate planning process, Baker Tilly often works closely with attorneys, financial advisors and insurance advisors. In fact, situations like these tend to produce estate plans that are well organized, well communicated and well received by all parties.

"The ideal situation is when you can sit at the table with everybody," Schuster said. "We try to encourage it because it gives us a very well-rounded picture and ensures that everybody is working toward the same goal."

Also, it is worth noting that your spouse needs to be included in the estate planning process. After all, the last thing you want with your estate plan is for it to be a secret. When it comes to estate plans, surprises generally are not good.

"We can help the surviving spouse by reducing their stress, so they have someone to talk to and answer their questions," Bray said. "And it's important that your surviving spouse knows who to call when you die. So you need to involve them and set up relationships with your CPA, attorney, investment advisor and insurance advisor so that your spouse knows them too."

In the end, our clients and their families can take comfort in knowing that if they keep clear records of their assets and outline their estate planning goals, Baker Tilly usually can take it from there.

"I try not to have the 'tax tail' wag the dog," Schuster said. "So I ask clients to tell me what you *really* want. And then we can figure out the best way to get you there. Basically, tell us what you want, and we'll take care of the rest."

# Contributors

**Ryan Bray, MST, CPA**
Senior manager, Baker Tilly
+1 (206) 667 0329
ryan.bray@bakertilly.com

**Scott Burack, CPA, J.D., CFP**
Director, Baker Tilly
+1 (949) 809 6016
scott.burack@bakertilly.com

**William Grady, J.D., CLU, CFP**
Director, Baker Tilly
+1 (414) 777 5572
william.grady@bakertilly.com

**Michael Lum, J.D.**
Director, Baker Tilly
+1 (972) 748 0135
michael.lum@bakertilly.com

**Randi Schuster, J.D., LLM**
Principal, Baker Tilly
+1 (212) 792 4960
randi.schuster@bakertilly.com

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