

**IN THIS
issue**

- 01| Estate Planning Fundamentals
- 03| Member Of The Month - Sergio White
- 04| Firm Retreats and Planning: The Key to Successful Planning and Goal Setting



Make Your Voice Heard About TAPER Syracuse

Join Dave Zumpano, Briana Moriarty, Amanda Smith and the rest of the LWP team to discuss what you liked about TAPER Syracuse and what you'd like to see at future TAPERs. We'll also discuss what you want from your Practice Coaches and from ActionStep.

Don't Miss Our Roundtable Discussion
WEDNESDAY, NOVEMBER 14TH
3:00pm (Eastern)

Register Today at
[TAPERRoundtable.
LawyersWithPurpose.com](http://TAPERRoundtable.LawyersWithPurpose.com)
or Call (877) 299-0326.

877-299-0326
INFO@LAWYERSWITHPURPOSE.COM
555 FRENCH RD., STE. 202
NEW HARTFORD, NY 13413

Estate Planning Fundamentals

Amanda L. Smith, ESQ

Estate Planning: this complex area of law can be boiled down to three fundamentals:

1. Client Needs
2. Family Dynamics
3. Relevant Law

Once you address each of these fundamentals, you will have a comprehensive estate plan that will meet the goals of your clients each time.

First, we need to look at the primary needs of the client. After working with thousands of clients over the years, we've found that four main components are usually at the heart of each client's needs: access, control, timing, and ability to amend. Clients want to know who has access to their "stuff," who is in control of their "stuff," and when this access and control is granted. After these are settled, they want to know who has the ability to change or amend these provisions.

1. Access: What type of access to the client's stuff is granted? Is the client going to give access to principal, income, neither, or both? Who is going to have this access? Typically, it might be the client's children or loved ones. How is this access granted? The clients can decide whether to give direct (outright) access or indirect access through a third party. Clients might also choose to restrict access for certain instances (e.g., when a beneficiary is under a stated age, disabled, or upon remarriage).
2. Control: Who is in control of the client's stuff? Is it going to be the client or a third party?

It might be a relative or professional. Also, you'll want to distinguish between control for various things: (1) the power of attorney agent is in control of the assets in the client's own name while he is alive; (2) the trustee is in control of the assets in a client's trust; and (3) the executor is in control of assets in a client's probate estate after his death.

3. Timing: When does someone have access and control of the client's stuff? As illustrated previously, an executor has no control until the client passes away. During the client's lifetime, the power of attorney agent and trustee would have control of his assets. How might these change upon the client's disability? Does your client want to restrict access or control of assets if his spouse becomes disabled, remarries, or dies?
4. Ability to Amend: A client can amend a revocable living trust while he is alive and well. What happens when he becomes disabled? Who will have the ability to amend a revocable living trust then? In a non-estate tax planning irrevocable trust (like the iPug™), the client can have the ability to amend or change the beneficiaries and the manner, method, and timing of distributions.

Next, you will have to determine what family dynamics might be an issue with each client. Is it a first or second marriage? Do they have a Brady Bunch situation with his/hers/our children? Sometimes "family" may not be defined as the typical husband, wife, and children; the client may have nieces, nephews, or

Estate Planning Fundamentals (Cont.)

other loved ones he wishes to treat as his own family. It is also important to consider the skills, educational desires, financial burdens, limitations, and disabilities of any intended beneficiaries. Often these things can be a deciding factor on what type of estate plan a client wishes to implement.

Finally, the skilled estate planning attorney should be familiar with relevant laws relating to the treatment of trusts. These are common/trust law, post-death administration law (e.g., probate and trust administration), asset protection law, Medicaid law, and tax law.

1. Common/trust law stems from contract law, the Uniform Trust Code, the Restatement of Trusts 2nd, and the Restatement of Trusts 3rd.
2. Post-death administration law is divided into two main categories: probate and trust administration. Probate is the proving of a will in accordance with the state's statutory requirements and administration and distribution of the decedent's assets as specified in the will. If someone dies without a will, the state will have intestacy laws that specify how the estate is to be administered and distributed. Trust administration is the administration and distribution of someone's assets in accordance with the provisions the decedent put in place via the terms of the trust. This is preferred, as it typically allows no court supervision as opposed to probate, which requires the court to oversee the process.
3. The general rule of asset protection law is that in any trust you create (1st party), whatever you have a legal right to receive on your own or through another will be available to satisfy the claims of your creditors. It has been held to be against public policy to create an irrevocable trust that permits access to the grantor alone or through another but not to the grantor's creditors. The exception to this would be a Domestic Asset Protection Trust (DAPT), which is a trust created by statute and recognized in the following states: Alaska, Colorado, Delaware, Hawaii, Michigan, Mississippi, Missouri, Nevada, New Hampshire, Ohio, Oklahoma, Rhode Island, South Dakota, Tennessee, Utah, Virginia, and Wyoming. As LWPTM members, we do not need to use DAPTs since our iPugsTM are based on hundreds of years of sound, proven common law trust and asset protection principles.
4. Medicaid law is more restrictive than asset protection law. It is important to remember, however, that Medicaid is just another potential creditor, so general asset protection laws still apply. In addition to general asset protection laws, with Medicaid, there are two more restrictive eligibility standards:
 - a. Spousal restriction: any trust created by a Medicaid applicant, or spouse, other than by will, shall be deemed to be an "available resource" to the extent of the benefits retained for the applicant or spouse. This is commonly referred to as the "testamentary trust exception." 42 U.S.C. §1396p(d)(2)(A) and

- b. Uncompensated transfer restriction: if a Medicaid applicant has made an uncompensated transfer within 60 months of applying for benefits, there will be a period of ineligibility assessed. It is important to note that asset protection is effective immediately upon transferring the asset into an asset protection trust—meaning Medicaid cannot reach those assets in the trust. Medicaid will, however, impose a penalty for making the uncompensated transfer if it was done within the 60 months immediately preceding the Medicaid application.

5. Tax law is a vast area of law, but the same general principles appear repeatedly in asset protection trust planning. These are grantor trust status, income taxes, gift taxes, and estate taxes.

A grantor is treated as an owner of a trust for income tax purposes if any provision in IRC §§671-679 is triggered. With a grantor trust (like the iPugTM), the grantor pays taxes based on the individual income tax brackets. In a non-grantor trust, the tax brackets are compressed, which typically requires more income taxes to be paid annually.

Gift taxes are assessed on completed gifts made during the grantor's lifetime. In 2018, the annual gift tax exclusion amount is \$15,000. This means that an individual can gift up to \$15,000 per year with no gift tax implications. For 2018, the lifetime gift tax exclusion is \$11.2 million. Thus, while an annual gift tax return (Form 709) should be filed if an individual gives away more than \$15,000 in a calendar year, no taxes would be due until the individual has given away more than \$11.2 million dollars. In the iPugTM, initial funding of the trust is an incomplete gift for tax purposes as the grantor retains the power to change beneficiaries, so no Form 709 is due upon initial funding.

If any provision of IRC §§2035-2042 is triggered, the assets of a trust will be included in the grantor's estate at death. The 2018 estate tax exemption is \$11.2 million for an individual. A married couple gets twice this amount. As such, someone would need substantial assets in his or her estate at death to be subject to federal estate taxes. With iPugTM trust planning, we are not concerned about estate tax inclusion, as over 99.9% of the population doesn't have a taxable estate in the first place. By using an iPugTM and keeping assets in the decedent's estate (triggering a provision of IRC §§2035-2042), trust beneficiaries are able to receive a full step-in in basis on trust assets.

You can see the many benefits of iPugTM trust planning—especially for the 99.9% of the population without a taxable estate. The grantor is able to maintain control of trust assets and pay income taxes at the expanded, individual tax brackets, while trust beneficiaries receive a full step-up in basis on assets in the trust.

*Lawyers With Purpose would like
to recognize Sergio White as
SEPTEMBER 2018 Member of the Month*



**What is the greatest success
you've had since joining LWP?**

Thanks to the LWP Organization and team members, I have developed a knowledge of Medicaid, Elder Law and Estate Planning, That has allowed me to help people in my community to preserve their legacy and secure a future for their families. My approach to the practice of law has always been to provide service and value to my clients and because of LWP I have been successful in doing just that. I enjoy seeing the look on people's faces when they realize that with proper planning, they can remain in their home and not worry about the government ending up with it when they pass.

What is your favorite LWP tool?

My Favorite Tool is the Revenue Focuser, because it allows me to look at my current position and know exactly what we need to do to meet our revenue goals and set future goals. It allows us to have realistic and achievable goals that we can work at accomplishing as a team and also allows us to track our efficiency and to see where we can improve.

**How has being part of LWP
impacted your team and your
practice?**

Being a part of LWP has allowed me to be more fulfilled and satisfied with the practice of law. This area of the law has allowed me to find ways of helping people plan for their future and their families future and I find this very rewarding.

Congratulations to you on your continued success!

Save the Date
March 25-29, 2018
SHERATON NEW ORLEANS, LA

TAPER
Twice-Annual Practice Enhancement Retreat
New Orleans, LA



Enroll Today: Retreat.lawyerswithpurpose.com

Firm Retreats and Planning: The Key to Successful Planning and Goal Setting

Phil Miner

**It was a pleasure presenting at TAPER with Amanda Bossow and working with firms on their planning.
If you missed TAPER, when is the last time you conducted a firm retreat and planning session?**

Step 1: Brain Storming Sprints:

Using the LWP Brainstorming Sprints located on the member website, you will find we have identified nine key areas for improving your practice and results. One of the keys to having a successful brainstorm is not to eliminate any idea or possibility. Also, you shouldn't do this alone; have your team contribute! A collaborative brainstorm will produce more results and not limit you to your own mindset and experiences. You may be surprised at how much you can do to enhance your business.

Step 2: Be Intentional and Focused When Selecting Your Goals

First, after reviewing the brainstorming sprints you must get focused and intentional while creating four goals that will propel your firm forward. It is sometimes best to also identify at least one goal in a specific area, such as operations, marketing, revenue, and *personal*. That's right, even personal! Don't forget about having your own personal goal to focus on. Next, you need to follow the format on the "Our Firm Four Month Focus," formerly known as the Money Plan. It is so much more than just about making money. It is about having gratification and success, the way you determine success for your firm and yourself.

Second, once you have your goal identified, set a date that you are aiming to accomplish it. A goal without a deadline is nothing more than an idea or something you may be inclined to want to accomplish; it's not something you are committed to. Once you have the date, you need to identify a measurement. It must be measurable to know if you have achieved it.

Third, understand why this is a goal and you must be able to answer some core questions. You need to be clear how it is benefiting you and/or the firm, and how it is benefiting or impacting others. Be very clear on your "WHY." It will be what propels you to reach your goals and keep you moving forward even if it gets difficult. Most goals are pushing us beyond our comfort zone and having the right mindset is crucial to accomplishing goals we set!

Fourth, set your action plan and identify common roadblocks that have prevented you from accomplishing prior goals. What could stand in your way of successfully reaching your goal? Once you know, then you need to be thinking about what needs to be done to overcome that challenge or obstacle. Don't let yourself be the roadblock! If you start thinking of ways to overcome the obstacle your mind will help you and you will clearly see opportunities and solutions you may have otherwise missed. It is the same if you feel you won't reach that goal or that the obstacle is too great. Then you have sealed your fate, as your mind will actually prevent you from finding the right solution. Your mindset going in will have a lot of influence on your results.

Last but not least, you need to define what actions are being taken, who is responsible for those actions, and when the actions are due. Hold yourself accountable to deadlines and be clear on who is doing what. Also define a leader for the goal who has the skillset to manage what is being done to reach it. Your leader needs to have a way of tracking and reporting the progress toward the goal. Don't let things fall through the cracks because the next thing you know, you'll have the same unfinished goal in your next planning session.

Step 3: Implement Your Plan

Break your plan into more details and address the items from your Firm Focuser. Next, make it happen! Accomplish your goals and enjoy your practice more. If you attended TAPER, what have you done since you got back to make sure your goals are on track and you are executing the plan you defined? Make sure you have not returned back and left your goals in your materials! Make your goals the focus of your firm and team meetings. How are the five key focusers providing you key indicators and supporting you to track progress and results?

If you missed TAPER look at the forms online and start setting your goals. Be purposeful and intentional!

I hope to see all of you next year and I wish you all success in accomplishing your goals!