



CHAPTER 6

FINDING AND WORKING WITH PROFESSIONALS

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PROFESSIONAL SERVICES NEEDED IN SUCCESSION PLANNING

Preparing a thorough succession plan will often require the assistance of one or more professionals. Whether a single professional will suffice or whether a team of professionals is needed will depend on your particular circumstances. Most succession plans will benefit from the services of an attorney who is familiar with retirement, estate planning issues and entity formation. An accountant may also be needed to help with the preparation of income tax returns and financial record-keeping. Individuals or families engaged in succession planning should also consult their insurance agent to verify that their insurance coverage is adequate for their needs and that it will continue to meet these needs in the future. Many families also rely on a financial planner to help formulate and achieve financial goals and manage investments and other assets. Bankers, loan officers, insurance agents, appraisers and foresters may also help collect and provide information for the succession plan and assist in financial planning. Finally, in some instances, a professional mediator or counselor may be needed when there are difficult personal issues to address.

After identifying the professional services needed, the next step is to identify professionals who can sufficiently and cost-effectively provide these services. Bankers, insurance agents, and financial planners are often associated with a particular company, so choosing one may be as much about choosing the company as it is about choosing the person. Many families engaged in succession planning may already have existing or even long-standing relationships with a lawyer, banker, financial planner, insurance agent and accountant. In these instances, the issue is not finding and choosing a particular professional, but of ensuring that the individual is qualified to provide the services needed for the succession plan and adequately involving the individual in the succession planning process. Given these factors and the importance of legal services to the succession planning process, the rest of this chapter focuses on finding and selecting an attorney and establishing a productive

attorney-client relationship. However, much of what is said may apply to the providers of other professional services as well.

FINDING AND CHOOSING AN ATTORNEY

The first question many people have is, “How do I find and choose an attorney to assist with my succession plan?” Since many attorneys advertise in one form or another, finding attorneys is not particularly difficult. An internet search can provide a reasonably complete list of attorneys for a particular community. The more difficult step is determining which of these attorneys is the best fit. The practice of law is so broad and varied that no lawyer can be an expert in every legal field. Some attorneys have a general practice that includes many different practice areas, while others focus more specifically on a relatively narrow range of topics. An attorney without a great deal of experience and expertise in estate planning may suffice for a client with limited assets, who only need a simple will. On the other hand, individuals needing help crafting a more complex succession plan may be better served by an attorney who focuses his or her practice almost exclusively on estate or succession planning.

Finding an attorney with the expertise and experience required can be a challenge. Seeking recommendations from people who have experience working with attorneys is a logical place to start a search. Recommendations from people who have gone through the succession planning process themselves or from professionals who have a working relationship with attorneys in the estate planning context may be the most valuable. Examples of the latter would include bankers, accountants, and financial or other professional service providers.

While attorney advertisements often list areas of practice, these lists should be taken with a grain of salt. There are typically no specific standards an attorney must meet to include estate planning, wills, trusts or probate in the list. The number and range of different practice areas advertised may provide a clue to specialization. Attorneys who claim to practice in a wide array of areas are less likely to have developed extensive experience or expertise in any one of those areas. Advertisements may also claim certification in a particular legal area. The state of Tennessee does not issue separate state certifications for lawyers. However, it does allow lawyers licensed to practice in Tennessee to be certified as a legal specialist by organizations accredited by the American Bar Association, including certification as a specialist in estate planning by the National Association of Estate Planners & Councils Estate Law Specialty Board, Inc. Lists of attorneys with these certifications can be found at <https://www.cletn.com/index.php/general-information/specialist>. While an attorney does not need to qualify as an estate planning specialist to provide competent or even excellent estate planning legal services, attorneys who qualify have proven experience and expertise in this area.

Perhaps the best online resource for locating attorneys and researching their areas of practice and qualifications is Martindale-Hubbell (<http://www.martindale.com/>). This directory provides a standardized set of information on attorneys, including their contact information, how long they have practiced law in Tennessee, where they attended law school, and the legal areas in which they practice. In some instances, the directory also provides a rating of the attorney's legal ability, as determined by other attorneys.

A final way to find an attorney is through a lawyer referral service. These referral services are operated by the bar associations in metropolitan areas, such as Knoxville, Chattanooga and Nashville. Links to these services can be found at: <https://www.tbpr.org/for-the-public/lawyer-referral-services>. For no or a small fee, the staff of the lawyer referral service will arrange an appointment with an attorney who practices in the relevant area of law. The lawyer referral service will schedule the initial consultation, which can be used to explore the attorney's suitability, determine the approximate cost for his or her services, and estimate how long the entire process will take.

A final step is to ensure that the attorney selected is in good standing with the Tennessee Board of Professional Responsibility (TBPR) by either calling the TBPR at 800-486-5714 or by visiting it online at www.tbpr.org. If there are no disciplinary problems, the next step is to schedule an initial meeting or consultation.

PREPARING FOR THE FIRST MEETING

The first meeting provides an opportunity for the attorney and client to get to know each other and determine whether the attorney is the right person to handle the client's estate planning needs. Clients should come to the meeting prepared to evaluate the attorney's qualifications and give the attorney an overview of their needs.

SOME QUESTIONS TO ASK BEFORE HIRING AN ATTORNEY

- How much experience do you have in estate planning?
- How much of your estate planning work has involved farm or family businesses?
- What percentage of your practice involves estate planning work?
- What alternatives will be considered in preparing my estate plan?
- What problems do you foresee in preparing my estate plan?
- Do you have any conflicts of interest that I should know about before I hire you?
- What documents will be prepared, and approximately how long will it take to prepare them?
- What is an estimated timeline to prepare the estate plan?
- How will you keep me informed of progress?
- What hourly rate will you charge, and how often will you bill me?
- What other costs or expenses will I be responsible for paying?
- Who else in your office will work on my case?
- Can paralegals or more junior attorneys handle some of the work at a lower rate?
- What is a ballpark figure of my total bill, including all fees and expenses?
- Would you consider doing the work for a flat fee?

Some attorneys may ask prospective clients to complete a questionnaire and provide them with a list of documents to bring to the first meeting or to send ahead of time. If not, it is still a good idea to collect relevant information and documents to take to the first meeting. Thoroughly collecting and organizing this information can save time and money and enhance the services provided. Being thorough and organized sends the message that, while the legal matter is important and expected to be treated with importance, the value of the attorney's time is also recognized.

Documents to bring to the first meeting include:

- Business plan or summary of information about the farm or family business, including a diagram or organizational chart of the business, if needed;
- A written proposal of the transfer plan;
- Balance sheet, including assets and liabilities owned by the client or any entities that are wholly or partially owned by the client. Any asset inventory or other records that indicate the value of these items may also be useful;
- List of owners or directors of such entities, along with recent tax returns, financial statements, bank statements and corporate records for these entities;

- The client’s complete personal income tax returns for the last three to five years;
- The legal description of any real property in which the client has an interest. You can find the legal description in the deed, mortgage or deed of trust, or abstract or title insurance policy;
- Copies of:
 - Mortgages or deeds of trusts covering any real property wholly or partially owned by the client or any entity wholly or partially owned by the client;
 - Any leases of real or personal property;
 - List of oral agreements the client has with a creditor, landlord, tenant or other party;
 - Financial statements the client has given to anyone in the past two years;
- List of anyone owing the client money or to whom the client owes money, along with their addresses, the amount owed, the terms of the loans, and any documents related to the loans;
- Marital agreements and/or divorce decrees; and
- List of dependents/children or other beneficiaries of the estate.
- A more complete list of the information to compile for an initial meeting with an attorney can be found in the “Sample Attorney Estate Planning Questionnaire” included as an appendix to this chapter.

Finally, it is important to be honest and forthcoming in the information provided to the attorney. The attorney must keep this information and documentation confidential and is generally protected from being forced to disclose the information by the attorney-client privilege. In the end, the attorney’s services will only be as good as the information and guidance the attorney is given.

LEGAL FEES

No one should agree to be represented by an attorney until they clearly understand how they will be billed for the attorney’s services. Attorneys typically charge for their services in one of three ways:

- **On a contingency basis.** Contingency fees are generally limited to personal injury cases or other matters where there is some expectation that the client will receive a financial award. When the attorney charges contingency fees, these fees, which are typically stated as a fixed percentage of the award, are contingent upon receipt of the award. However, regardless of whether the client receives the award, the client typically remains responsible for paying expenses of the claim, such as depositions, filing fees and court reporter fees. An attorney is unlikely to charge contingency fees in preparing a succession plan.
- **On a fixed fee-per-service basis.** Some attorneys will charge a fixed fee for standard routine matters such as simple will or deed preparation, real estate title searches, representation in a simple bankruptcy, or drafting a basic contract.

- **On an hourly basis.** Attorneys charge an hourly rate for almost everything else. The amount an attorney charges per hour will be determined by a number of factors, including the extent of his or her experience in estate planning and the generally accepted hourly charges for legal services in the community. In many instances, an attorney will request the client pay a retainer up front against which the attorney will bill his or her time. Clients being billed an hourly rate should ask to be periodically provided with a complete, itemized bill so they can understand all of the services rendered and expenses incurred on their behalf.

Thus, a key topic for discussion at the initial meeting is how the attorney will bill for the services provided. Clients should expect to be provided a written letter or statement outlining the fee structure or to be asked to execute a representation or retainer agreement addressing the scope of the services to be provided and the charges for those services. Clients should carefully read these documents and ask questions if there is anything they do not understand. The document should cover the attorney's fees or hourly rates and any extra costs, such as copy costs, conference room charges, delivery charges, etc. When charging hourly fees, some attorneys may be willing to estimate the likely total costs of the services to be provided. Clients may be able to negotiate fees with the attorney. If they are going to do so, they should do so at the beginning, and make sure that the representation letter or agreement provided by the attorney reflects the outcome of these negotiations.

WORKING WITH AN ATTORNEY

The quality and cost of the legal services provided will depend, in part, upon how well the attorney and client work together. As is the case with most relationships, good communication is the key to a successful relationship. Clients should ask the attorney about their preferred method of communication and try to communicate in that way. If corresponding by email, clients should avoid using their work email or forwarding emails from their attorney to others. Doing so may jeopardize the attorney-client privilege that helps keep those communications confidential. Clients should ask to be copied on all correspondence pertaining to them and should promptly and carefully read all materials provided by their attorney.

The interaction between the client and attorney can also affect the cost of the legal services provided. An attorney's stock-in-trade is his or her time, and anything that can save the attorney time can save the client money. The following are some tips for keeping legal fees low:

- A more experienced attorney, such as a partner or senior associate in a law firm, will charge a higher hourly rate than a less experienced attorney, such as a junior associate in a law firm. However, the more experienced attorney will sometimes be cheaper in the long run as that experience may enable the attorney to resolve the matter in less time than an attorney with less experience could.

- Attorneys typically bill for time spent on telephone calls with clients, so clients should be smart and efficient when calling their attorney. Clients should refrain from asking the attorney questions that can be answered by a member of his or her staff. Also, attorneys typically bill in minimum increments of time ranging from one-tenth of an hour (i.e., 6 minutes) to one-quarter of an hour (i.e., 15 minutes). When clients call their attorney to ask a question that they can answer in one or two minutes, they are often billed the minimum increment of 6 to 15 minutes. As a result, clients should be prepared and organized when talking to their attorney and, if possible, wait to call their attorney until they have several matters to discuss.
- Clients should plan meetings at their attorney's office to avoid being billed for travel time and costs.
- Clients should make copies of documents before going to their attorney's office to save time and avoid copy costs.
- Clients should use attorneys for legal matters and other professionals for other matters. An attorney is an expert in the law. An attorney is probably not the best person to be talking to about business strategy or financial or personal matters. Not only will the hourly rate charged by the attorney be the same whether they are discussing legal or other matters, but it will also likely be higher than the charges other professionals would charge for discussing these other matters.
- Clients should examine their attorney's itemized bill for clues about how effectively they are utilizing their attorney's time.

However, clients should be cautious about taking actions that will affect their succession plan without consulting with their attorney. Something that might seem trivial or unimportant to the client could have significant legal implications.

Clients who cannot make a scheduled appointment with their attorney should call as soon as possible to allow their attorney to devote that time to something else. On the other hand, clients should generally avoid dropping by without an appointment, as their attorney will often have other meetings or deadlines to meet.

Lastly, it is essential to realize that attorneys often have obligations that can prevent them from promptly responding or working on short notice. On the other hand, while attorneys are usually busy, clients do have a right to know what work has been done for them and what activity is currently taking place on their behalf. Itemized bills and copies of correspondence should give clients an idea of how their matters are proceeding. If clients become concerned about a legal matter's status, they should contact their attorney to get an update on where things stand. If the attorney cannot provide an update within a reasonable amount of time or a client feels like their attorney is not adequately representing them, they can file a complaint with the Tennessee Board of Professional Responsibility (800-486-5714 or www.tbpr.org).

CONCLUSION

Getting the proper professional assistance is key to preparing a good succession plan. While an attorney's services are likely needed, the services of other professionals, such as an accountant, financial planner, bank or loan officer, insurance agent or family counselor, may also be required. In acquiring these services, clients should strive to be as sophisticated and knowledgeable a consumer as they can be. This publication, along with the other chapters in this workbook, is designed to help people become more sophisticated and knowledgeable consumers of legal services.

After the legal services are identified, the next step is to find and choose an attorney who can provide these services. Finding an attorney with the right qualifications and characteristics may require effort and careful thought. However, there are several ways to learn about attorneys before hiring one. Taking advantage of these opportunities to select an attorney who is a good fit and establishing a clear understanding of the services they will perform and how they are to be paid for these services is critical to establishing a good relationship.

Finally, the quality and usefulness of the professional services provided will depend on the attorney and client relationship. In general, the clearer the client's desires and expectations are communicated to the attorney, the more likely the client is to get the services they want and need. Similarly, the better the client understands the process and the attorney's constraints, the more likely the client is to be satisfied with the services they receive.

A "Sample Attorney Estate Planning Questionnaire" is included in the appendix for this chapter. This form provides a sample of the type of information an attorney will need to begin the process of writing your will and developing your estate plan. Your attorney may require additional information, depending on the complexity of the estate.

APPENDIX

Sample Attorney Estate Planning Questionnaire

Date: _____

Full Name: _____

Date of Birth: _____ Social Security No. _____ Place of Birth: _____

Mailing Address: _____

Street or P.O. Box number

City

State

Zip Code

Phone: (Home) _____ (Work) _____ (Cell) _____

Email Address: _____

Occupation (former if retired) _____

Employer: _____

Spouse: _____

Date of Birth: _____ Social Security No. _____ Place of Birth: _____

Spouse Occupation (former if retired) _____

Spouse Employer: _____

Date of Marriage: _____ Prior Marriages: Yourself: _____ Spouse: _____

Names of Children:

A: _____ Date of Birth: _____

Name of Child's spouse (if any): _____

Mailing Address: _____

Street or P.O. Box number

City

State

Zip Code

Grandchildren: _____

B: _____ Date of Birth: _____

Name of Child's spouse (if any): _____

Mailing Address: _____

Street or P.O. Box number

City

State

Zip Code

Grandchildren: _____

C: _____ Date of Birth: _____

Name of Child's spouse (if any): _____

Mailing Address: _____

Street or P.O. Box number

City

State

Zip Code

Grandchildren: _____

D: _____ Date of Birth: _____

Name of Child's spouse (if any): _____

Mailing Address: _____

Street or P.O. Box number

City

State

Zip Code

Grandchildren: _____

List any specific items or amounts that you wish to give to any individuals or organization:

NAME

Item or Amount

_____	_____
_____	_____
_____	_____

Do you have a present will? Yes _____ No _____ (If yes, attach a copy)

Do you have any present living or other trusts? Yes _____ No _____

If yes, attach a copy and list approximate amount: \$ _____

Do you anticipate receiving an inheritance? Yes _____ No _____

If yes, give the approximate amount: \$ _____

Are you receiving or will you receive an annuity? Yes _____ No _____

If yes, to whom will the payments be made? _____

Is this a life annuity? Yes _____ No _____

Will the amounts continue after your death? Yes _____ No _____

For how long? _____

What will the amount of each payment be? _____

Do you work for a business which has some type of plan under which your estate or the person you specify will receive benefits on your death? Yes _____ No _____ Not Sure _____
Please attach a copy of your Individual or Employee/Participant Benefit Statement and any information regarding any retirement accounts or pensions.

Who will serve as your Executor? Each spouse for the other: Yes _____ No _____
Someone else? _____

Alternate (if above person(s) unable to serve): _____

Your choice to act as guardian or your minor children (if applicable): _____

City and State of residence: _____

Alternate(s): _____

City and State of residence: _____

Do you have a safe deposit box? Yes ___ No ___ If yes, where is it located? _____

Do you own any property in a foreign country? Yes ___ No ___, another state? Yes ___ No ___

Advisors:

Accountant: _____

Insurance Agent: _____

Investment Advisor: _____

Were you referred by anyone? Yes _____ No _____ If yes, by whom? _____

LIST OF ASSETS (attach additional sheets if necessary)

	Owner(s)	Market Value
Real Estate:		
Personal Residence		
Approximate mortgage balance on residence		
Estimated value of furnishings		
Other real estate: (give location, acreage and improvements) Please attach a copy of deeds.		
A.		
B.		
C.		
D.		
E.		

Bank Accounts, Certificates of Deposit, Money Market Funds, etc. Please give name of bank or institution, type of account and approximate balance or value:

	Owner(s)	Market Value
A.		
B.		
C.		
F.		
G.		
H.		
I.		

Retirement Accounts. Please give type of account, using “P” for pension; “PS” for profit sharing; IRA, Roth IRA, SEP, or 401(k), name of company or financial institution, owner(s), and approximate balance or market value:

	Owner(s)	Market Value
A.		
B.		
C.		
J.		
K.		
L.		
M.		

Stocks, Bonds, Mutual Funds. Please list name of company or fund and type of shares and exchange on which traded. Please bring copies of most recent statement

	Owner(s)	Market Value
1.		
2.		
3.		
4.		

Ownership of Business (corporation, LLC, limited partnership, etc). Name of business and percentage of ownership: Attach copies of agreements, charter, by-laws or other documentation.

1.		
2.		
3.		

<u>Automobiles, Trucks, Boats, and Other</u>	Owner(s)	Market Value
1.		
2.		
3.		
<u>Farm Equipment / Livestock</u> (describe)		
1.		
2.		
3.		
4.		
5.		

Accounts Receivable. Mortgages, Notes or Debts owed to you. Please list debtor's name, date loan made and approximate balance remaining.

	Owner(s)	Market Value
1.		
2.		

Debts. List any mortgages or other substantial debts owed by you that are not shown above:

	Debtor(s)	Market Value
1.		
2.		
3.		
4.		

Life Insurance.

Company	Face Value	Cash Value	Person Insured	Policy Owner	Beneficiary	Loan Against Policy

Note: Attorney may require signature of both husband and wife if both are using the attorney to prepare wills to insure each understands the attorney is acting as attorney for both and cannot be an advocate for either against the other. All information will be shared by both parties. No confidential information from each party, etc.

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