YOUR MONEY

Focusing on the Human Element of Estate Planning

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By PAUL SULLIVAN

JOHN A. WARNICK remembers exactly when he realized trust and estate lawyers like him were doing a disservice to their clients.

It was early on a Tuesday, after a holiday weekend, when a 21-year-old client called cursing and saying that she wanted to fire her trustee. She hadn't received her monthly distribution check from a trust fund set up for her and her siblings.

Mr. Warnick tried to explain that given the holiday weekend the check had probably been delayed in the mail and would arrive in the next day or two. But she was convinced the trustee was holding back the money.

"The trust was created for them to get an education, and here she was at 21, dropped out, living on a monthly distribution," he said. "What I found out is she had spent the weekend gambling at a casino in the mountains and had written checks that were going to bounce if she didn't get a distribution."

While the scene seems like something out of a reality television show, every trust and estate lawyer has stories about trust fund beneficiaries who embody all the worst traits of spoiled rich kids. But this particular call got Mr. Warnick, then a lawyer at a large law firm in Denver, thinking about

how estate planning was missing the human component. The emphasis was on transferring the most money to heirs free of estate tax and then insulating that money from creditors.

"I said, 'There has to be a better way to do planning so all this tax-efficient, elegant trust planning doesn't hurt people,' " he said. "I saw well-intentioned, technically precise plans reap negative unintended consequences."

Alas, this is not a story about a eureka moment that led immediately to change. It took Mr. Warnick another decade of toiling away at the law firm before he crystallized his goals and created the Purposeful Planning Institute.

The name itself may cause some head scratching. What kind of estate planning would not have purpose? But purposeful planning's goal is to get people who want to create a trust to think more deeply about the document's language and how it binds trustees to make distributions now and into the future.

The movement's adherents are fervent but they are also few; the institute has only about 345 members. Their approach also faces resistance from professionals who practice estate planning in more traditional ways.

"The attorneys who don't like this don't like it because it's way outside the box," said Alison Comstock Moss, a vice president at Paul Comstock Partners and an adherent to purposeful planning. "And they have a very legitimate point. They need documents that will stand up in court when they're tested."

And as a movement that is only four years old, it has not faced many tests.

So how does purposeful planning differ from traditional estate planning?

"What we stand for is making sure the planning has a deeper purpose and meaning to it than just being driven by taxes," Mr. Warnick said. "The challenge is to get those core planning disciplines — lawyers, C.P.A.s, wealth managers — to start with 'why' instead of immediately marching into 'how.' "

To accomplish this, Mr. Warnick has come up with seven keys of purposeful trusts. The first is for the trust to be written in the first person to capture the voice of the person creating it and connect him or her to the beneficiaries. The second is that it needs to be free of legal jargon and written in plain English.

Others include giving the trust a name that resonates — one is the Red Corvette Opportunity Trust — including clauses that get at a personal vision, and offering guidance in the form of life lessons.

The most difficult of the keys, though, may be to help beneficiaries feel gratitude. It's an emotion that usually rises up naturally after kind acts, not one mandated by clauses that link behavior to financial rewards.

"You can't write it into the document," Mr. Warnick said. "You need to model that for your children and grandchildren but don't make it an edict. If you compel them, you're going to destroy what you're trying to do."

Yet more personal does not necessarily mean more restrictive. He says he often asks highly driven clients who want to place heavy restrictions on a trust how they would feel if they were the beneficiaries.

Ms. Moss said she had clients in Greenwich, Conn., who were worried about their money messing up their children — a common fear in a town that has become synonymous with hedge fund excess.

A traditional option would be to create what is known as a HEMS trust, which allows distributions for health, education, maintenance and support. That would seem clear enough to most, but Ms. Moss said the terms maintenance and support were too vague.

"How you decide what maintenance and support are is different from what I'd say is maintenance and support," she said. "If you have a trustee at a big trust firm, your distributions are going to vary because it's going to depend on the professional trustee's view of maintenance and support."

The Greenwich family set up an endowment that would fund certain life experiences for the children that their parents wanted them to have, like education, study abroad and missions for their church. "That's a little more specific than a standard estate plan," Ms. Moss said.

There is the risk that such customization will go too far. Adrienne M. Penta, regional trust head at Brown Brothers Harriman, counseled a client who created an extensive and precise series of criteria — all based on motivating his heirs to contribute to society — to get distributions from the trust.

If they meet certain criteria, from academic achievement to public service to entrepreneurialism, they could get up to 1 percent a year of a trust worth hundreds of millions of dollars. If not, they get nothing. He even stipulated the hiring of two former college counselors to evaluate his heirs' accomplishments.

"He's pretty adamant that this is the only way you can get a distribution from this trust," Ms. Penta said. "He doesn't want distributions made altering his guidelines, even if someone is in great need."

It is an antidote, to an extreme, to Mr. Warnick's case. But it carries with it the potential to be destructive to the man's family for generations. Ms. Penta suggested instead that he put his wishes in a nonbinding letter to guide the trustee. The trust itself granted the trustee broad, discretionary authority on distributions.

There are limits to purposeful planning. "You can't suddenly at age 55 or 65 or 75 turn out a generous stripe and expect to overcome years of parenting neglect or bad parenting," Mr. Warnick said. "We're not saying this by itself is going to save the trust beneficiary. We need to work on the document but also on the financial parenting and grandparenting."

Another limit is that this approach to planning takes a lot of time and is expensive. Ms. Moss said she could do purposeful planning only with clients who have more than $25 million because of the cost and time involved. She charges $24,000 as a project fee, which is separate from any investment management fees.

There is a more skeptical view of purposeful planning, too. Now that the estate tax exemption for a married couple is more than $10 million, very few people need to do the kind of tax planning that even affluent people did from the 1990s through to 2012, when the current exemption was made

permanent and indexed for inflation. And that means there are not as many clients for estate planning professionals.

"A lot of people made a living helping wealthy people avoid estate taxes," said Richard A. Behrendt, director of estate planning at Annex Wealth Management and a former I.R.S. inspector. "That's still there for the ultrawealthy, but there's less of that. There's an entrepreneurial part of this for attorneys who are starting up these consultation practices."

Still, thinking of the overly aggressive tax schemes he audited in the 1990s, Mr. Behrendt said: "I think their heart is in the right place. I can tell you firsthand there is a need for this."

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