

# SAALFELD GRIGGS DENTAL INDUSTRY TEAM

## WHITE PAPER: ESTATE PLANNING: PREVENTATIVE MEDICINE FOR DENTISTS



Sound counsel.  
Smart business.

BY JEFFREY G. MOORE

### I. Introduction: *"Filling, Schmilling!"*

The diagnosis is clear: pit and fissure decay on molars 18 and 31. The treatment is equally as clear: composite fillings and another round of stern encouragement to improve home hygiene. The patient rejects both and defers to yet another day. With that, the prognosis also becomes clear and the patient's choice defaults to continuing decay and pain. (And you'll probably see this patient more often than either of you would like!)

An estate plan for a dentist is like the filling for this patient—some preventative medicine. The plan may take different shapes for different reasons; gold or amalgam filling for one, resin or ceramic for another. Whatever the proper treatment under the circumstances, the estate plan will be suited to the dentist's primary concerns and objectives.

A young dentist may worry about her spouse or small children, but defers planning because she feels she has more debt than assets. A more experienced dentist may feel uneasy about creditors, but defers planning because malpractice liability has "yet to be a problem for me." A dentist with an eye to retirement may worry about transferring his or her practice in the event something should happen to that dentist, but defer planning because she doesn't know where to begin. A dentist who feels financially secure may worry about estate taxes, but defers planning because he is confident "he will spend it all before he dies."

Whatever the reason for deferring treatment, the cavity doesn't go away on its own. In short, proper planning for your estate concerns—no matter how big or small—can alleviate some painful surprises down the road.

### II. Planning for Spouse and Children

Before addressing solutions for your spouse and children, we should consider some important estate planning basics. In real estate, they say it's "location, location, location." In estate planning, it's "title, title, title." How you own assets determines how those assets will pass. And they will pass; whether under your plan or the one the *State* writes for you.

For example, if you own an asset jointly with your spouse, the asset will automatically transfer to your spouse upon your death. However, it does so without utilizing your estate tax exemption. (More on that below.) If you own the asset in your own name, rather than jointly, you may be in a position to save some taxes, but the asset would be subject to court probate before it can transfer according to your Will. What is a potential solution to both concerns? Titling assets in a living trust, for example, avoids the court probate and can also implement the estate tax planning provisions discussed below.

But even if you have a living trust that provides for the management of your assets after your death and until your child reaches a more capable and mature age (perhaps age 95 for some kids!), do you still need a Will? Yes. You need both. A living trust holds assets and children are not assets. (No, I'm not insinuating that they're liabilities either. Well, at least not until they go to

college.) Until a child reaches the age of majority, the child cannot legally act on their own behalf. If something were to happen to you and your spouse, current or former, who would legally care for your child? A Guardian. You appoint a Guardian under your Will. If you do not have a Will, the decision of who will have custody of your child is left to the determination of the court. Not a good plan.

In a similar vein, leaving property to a child under the age of 18, as opposed to leaving it in trust for them, would result in the appointment of a court Conservator. The Conservator reports to the court each year, which takes time and resources, and then distributes the assets to your child at age 18. Some would argue that age 18 feels just a wee bit young for handling a significant amount of funds. Ferrari disagrees and red is a very popular color.

So you've provided for your children, but what about your spouse? You can, of course, leave everything outright to your spouse and provide for his or her welfare should you die first. That is often the case with beneficiary designation items such as insurance contracts or certain retirement accounts. But some have the concern, especially if they die prematurely, that their hard-earned assets will find their way to their spouse's new spouse and not ultimately to their own children. One solution is to establish a trust fund for your spouse that provides for their use, welfare and maintenance during life, but that whatever remains upon your spouse's death must pass to your children. The insurance policy can name the trust as the beneficiary as opposed to your spouse outright. Your spouse still benefits and can even manage the proceeds, but the funds are earmarked for those you designate when your spouse passes away. This has the added benefit of utilizing your estate tax exemption upon your death as well.

### III. Planning for Potential Creditors

The general rule for creditor-protection planning is that if you can access an asset (i.e., you own it), so can your creditors. In addition, once you become aware of a potential claim or a judgment, it is too late to transfer assets to another person (e.g., spouse) until the matter is settled. But there are some exempt assets. For example, your 401(k) and your IRA are exempt from creditors, as is the cash value of life insurance. Your general investment assets, however, are not. If your malpractice insurance is insufficient to cover a liability claim, your personal assets are at risk.

If you are married, an interest in your practice or other related entities is generally not suitable for transfer to a spouse. However, a transfer of personal assets and investments to your spouse's living trust usually is. If your spouse owns it, and you do not, you might indirectly benefit from those assets by nature of your spousal relationship, but your creditors might not. This is because the claim against you personally will generally be limited to your personal assets and not the assets of an innocent, uninvolved party.

In addition, a trust for your spouse, particularly if your spouse has little or no assets in his or her own name, puts value on "your spouse's side of the ledger" and enables your spouse to utilize his or her own estate tax exemption in addition to yours. Once again, more on that below.

### IV. Planning for Transition

How valuable is your practice today? Would it be as valuable if something were to happen to you, whether incapacity or death? In such circumstances, the timeliness of the transfer could translate into a higher sale value. The longer a practice languishes in limbo, the higher the lost-patient ratio.



As mentioned above, unlike a Will, a living trust avoids the court probate upon your death. The probate process is not the end of the world, but there are certainly greater delays whenever you are dealing with a statutory process governed by a court. The court and the statutes control the timing and ability to sell your practice. For example, the Will must first be validated by the court and then a Personal Representative must be duly appointed. All of this takes time. A living trust, on the other hand, is a private contract between you and your Trustee. Upon your death, your Trustee is immediately able to transact your business without any court involvement. In fact, unlike a Will, a living trust is effective the moment you sign it—not just upon death. That said, if your disease or accident were permanently disabling but not fatal, your Trustee would still have the ability to act in your stead and in your best interests.

If you do not have a living trust, you should at least have a Durable Power of Attorney that names an Agent to act on your behalf should you become incapacitated? Although not as effective as a living trust for most business matters, certainly an essential tool in any estate plan. In addition, health care documents such as an Advance Directive and a universal HIPAA Authorization are also essential for dealing with situations surrounding your incapacity on the non-financial side of the fence. Without such documents, the court could once again get involved in your health decisions.

## V. Planning For Taxes

Finally, there are tax reasons for your estate plan. You're probably tired of reading about death, incapacity and other uplifting life-altering scenarios (and you thought people hated going to the dentist), so I'll summarize the tax laws into two basic rules:

RULE #1: Whatever you give to your spouse (or charity), no tax. Unlimited.

RULE #2: Whatever you give to anyone else, you get an exemption as follows:

- FEDERAL: \$5.25 million (40% tax on the excess)
- OREGON: \$1 million (10-16% tax on the excess)
- WASHINGTON: \$2 million (10-19% tax on the excess)

In other words, it's like you have two coupons. The first coupon provides that whatever you give to a spouse is exempt from estate tax. That's true, but don't get too comfortable. Remember that when your spouse passes away, everything you gave to your spouse will be included in his or her estate and thus potentially taxable. The "taxable estate" is anything you (or your spouse) own or have an interest in. Real property, bank accounts, investments, timeshares, business entities, retirement accounts, cars, whatever—even the face amount of your life insurance proceeds.

So if you have a \$5.25 million federal exemption coupon, and your spouse does as well, what if you use that exemption coupon and left your estate to a trust that went to your children upon your death... but first allowed your spouse to be the primary and even sole beneficiary during his or her life? That would qualify for using up your federal (and state) exemptions and thus keep the assets out of your spouse's taxable estate. Your spouse, in turn, would also have his or her own \$5.25 million federal exemption to use in his or her death. In short, by not simply giving everything to your spouse outright, you and your spouse potentially double your combined available



exemption amounts to \$10.5 million. At a 40% tax rate, plus a 10%+ state rate, that translates into significant tax savings. There is a federal "portability" of unused exemption amounts, but for both the tax and non-tax reasons described above the tax-planning spousal or "bypass" trusts are preferable estate planning strategies.

So whatever your diagnosis, don't defer treatment. Your estate plan is a preventative filling.

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