


TABLE OF EXPERTS

Estate Planning

BY HOLLY DOLEZALEK, CONTRIBUTING WRITER

The Minneapolis/St. Paul Business Journal held a panel discussion recently about estate planning. Panelists included Cole Hickman, a partner at Hellmuth & Johnson; Andrea Thermos, a partner at Boulay; Anne Paape, general counsel for Meristem Family Wealth; and Marya Robben, a partner at Lathrop GPM. Dana Holt, CEO and philanthropic strategist at Holt Consulting, served as moderator.

SPONSORED BY



Dana Holt: Given the change in tax law in the past 10 years, how can estate plans be built to accommodate flexibility and changes in legislation?

Anne Paape: It's most important to make sure that your documents are drafted in a way that enables the ebb and flow with changes in the law – inserting things like trust protectors or other modern tactics that allow for the modification of a document down the road. Some trusts can last 125 years, and you're going to see a lot of [tax law] changes in that time

Holt: What are some nontax and noneconomic considerations that one should be mindful of while developing an estate plan?

Paape: A lot of people focus on “what do I do with my assets?” and they forget about: Who are the people who are in charge of making these determinations or administering the estate? Should it be all my children? If your kids can't agree on where to eat dinner, they're not likely to be able to agree on everything that deals with your estate plan. Or if there's animosity between family members, don't put them together and expect them to make unanimous decisions. Legacy assets, like lake homes or family heirlooms, don't just not mention them, be purposeful around them.

Andrea Thermos: People forget about all of their online accounts. They are not necessarily the financial accounts, they are social media or email accounts. It's important for people to remember that you need to give permission for access to your cellphones, online accounts, social media accounts, and any digital asset or online access accounts.

Paape: People forget about when they're planning for kids or grandkids that they don't know yet, and so certain things like providing for special needs or problems that can happen in life – for example, potential addiction issues, challenges, all of the unknowns that can occur in life – and making sure that those types of scenarios are well considered in estate planning documents, because again, they may be kids or grandkids or great-grandkids not yet born.

Holt: How long does estate administration take? I imagine that it gets back to your first point about organization.

Marya Robben: The fact that the decedent had a will or a good estate plan still does not make it an event. It makes it an easier process and a clearer process, but nothing any of us can do or your loved one could have done could make this a single event. I think that is a really important thing to understand, and communication even prior to a loved one's passing to help explain that in advance of the emotional moment is immensely helpful. Even though your loved one did everything they could to make this as easy as possible, there are taxes, and the IRS doesn't move quickly. If you die in March, it is going to be another 13 months before your last individual income tax return is filed. There is nothing we can do that changes that. So it just takes time. Your loved one cannot take it with them, and we don't want someone to be able to misappropriate it after you have left. The process protects people and takes time.

Holt: So what does good estate settlement look like?

Paape: One of the things that's really sparked the most issues is people who, during

their life, conduct financial transactions, somewhat informally. They've got handshake deals or loans not papered. They've got real estate transactions that didn't get title work done, things that leave loose ends. Those loose ends drive litigation and unclear expectations. In the end, family members end up with the impression that the estate has a greater value because those items are not documented, therefore not clear.

Cole Hickman: Also, good estate settlement can oftentimes mean avoiding probate. Most clients prefer to avoid the added cost, complexity, and publicity of probate when they pass away. But avoiding probate takes additional time and effort – both from the client and the advisors – during the client's lifetime. Trusts need to be properly funded and advisors need to know about all of the assets.

Robben: What we are collectively saying is that what makes a good estate administration is doing all the work while you are alive. It actually takes some work while you are living to make this a smooth administration process after you have passed. If you do not do the work before, it is going to be bumpier afterward.

Holt: How are the pandemic and changes to tax laws impacting people's thoughts about where to live or retire, and how is that impacting your practice?

Robben: We have seen a lot more people realizing that they can live wherever they want to and do their work. We have seen an escalation in that kind of conversation in the past year. Some people are retiring, other people are just simply moving and working from another location. So, residency exit planning is an increasing part of the work we are doing with clients.

Holt: So what do you see as the biggest drivers for people when they decide to move out of state?

Robben: Taxes are usually part of the conversation. They also look at where their family is located and the weather. As you get older, that is a factor for some families. But children and grandchildren do not necessarily stay home anymore; they move to interesting places and their grandparents want to be near them, or they want to vacation. So grandparents say, “Great, I will move to Florida and you can vacation to visit me.” And there is a little bit of a community effect. We have heard more of our clients say, “All of my friends have moved to Florida or Arizona, so we want to go, as well.”

Holt: We've all heard that litigation in trusts and estates is increasing. How is that impacting your practice?

Robben: Yes, disputes after death are increasing. When things are not known in advance and family members are negatively surprised by what a plan says, it increases people's interest in fighting. They think you must have taken advantage of mom or dad in order to get the cabin. So we are doing a lot more counseling on the pathway of helping families determine whether they actually want to get involved with litigation after a loved one has passed away. The inheritance is not going to go up. The attorney fees will go up, but the inheritance amount will probably go down. And the judge is not going to say who mom loved best; that will not be a line in the order. We are having a lot of hard conversations with



MODERATOR

Dana Holt, CEO and philanthropic strategist, Holt Consulting

Dana Holt is a charitable gift planning educator and professional speaker. She teaches fundraisers how to raise millions more by accessing wealth, not just cash – and teaches advisers how to grow their practice with the power of philanthropic planning. Before starting Holt Consulting, she began her career as an estate planning attorney and then spent 13 years at a Fortune 300 financial services company. There she helped advisers all over the U.S. with their most complex cases and taught them how to integrate charitable planning into their practice. Now she focuses exclusively on teaching charitable gift planning through professional speaking, consulting, and her first-of-its-kind coaching program, Turning Wealth Into What Matters. Holt is a graduate of Mitchell Hamline School of Law and Southern Illinois University. She serves as chairwoman of the Minnesota Gift Planning Association. She has been quoted in Forbes and has been a featured writer for the Thomson Reuters Estate Planning Journal. Holt has recently taken up speed ice skating and is an avid gardener at her home in St. Paul, where she lives with her two retired racing greyhounds.



PANELISTS

Cole Hickman, partner, Hellmuth & Johnson

Cole Hickman is a partner at Hellmuth & Johnson, practicing in the areas of estate planning and closely held business law. Hickman prepares estate and succession plans for individuals and business owners and serves as general counsel for small to mid-size companies across a variety of industries. He assists his clients in mitigating estate tax by drafting such documents as disclaimer trusts, credit shelter trusts, irrevocable life insurance trusts, grantor retained annuity trusts, spousal lifetime access trusts, and intentionally defective grantor trusts. He also works closely with business owners and their advisers to develop tax efficient business succession strategies. In addition, Hickman regularly counsels his clients through sales and acquisitions of business interests and real estate.



Anne Paape, general counsel, Meristem Family Wealth

Anne Paape works alongside Meristem's advisory team to provide internal expertise in the areas of estate, gift, trust and wealth transfer. She also serves as general counsel of Meristem Trust Co., advising on various aspects of trust and fiduciary matters. Paape brings over 10 years of experience as a trust and estate attorney to Meristem. Most recently, she was a partner at Gray, Plant, Mooty where her experience involved high-net-worth estate planning, estate and gift tax planning, closely held business advising, and trust and estate litigation.



Marya Robben, partner, Lathrop GPM

Marya Robben, a partner at Lathrop GPM, practices in the areas of estate planning, estate and gift taxation, fiduciary representation, probate administration, trust formation and administration, and guardianship and conservatorship law. She leads the firm's trusts, estates and legacy planning practice group. A Fellow in the American College of Trust and Estate Counsel, Robben frequently writes and speaks on estate planning and probate matters, advanced planning matters (including generation skipping transfer tax planning and intentionally defective grantor trusts), marital deduction planning, disclaimer planning, business succession planning, and navigating fiduciary duties to other professionals. For 10 years, she served as an adjunct professor at the University of St. Thomas School of Law, teaching courses on wills, trusts and estates.



Andrea Thermos, partner, Boulay

Andrea Thermos joined Boulay in 2012 and was promoted to partner in 2021. She is a CPA who specializes in trust, gift and estate tax compliance, planning for death, and post-death asset management and trust funding. Thermos provides audit defense for state and federal estate taxes, and she is responsible for the supervision and development of estate and trust tax staff. She has published articles and presented on several estate and trust topics to help people with their estate planning. She received her Bachelor of Arts in accounting at the University of St. Thomas. Outside of work, she enjoys reading, traveling and cooking.



clients, setting reasonable expectations for what the possible outcomes are. Families are more spread out than they used to be, and that detachment makes people a little bit more willing to litigate with loved ones after a death. The other side of this is that trusts in America really have grown over the past 30 years; there are a lot more trusts and questions about how the trusts are being managed, how they are being invested, what the trustee is doing or not doing. That leads to more courtroom-contested work and

more litigation, as well.

Paape: I'll add that it should be thought more about than just, who's the oldest child and who should be in charge? It is a tremendously large job with lots of rules. Even for laypeople, there's high expectations as to your fiduciary responsibilities. As a professional, it's not really any easier; we have policies on our books about how to administer trusts for good reason, but often people think it's best to name a family member, and that can be a great choice, especial-

ly if there's some personalized distribution decisions or otherwise, but pairing with somebody who can help you navigate the rules or can step in in case there is animosity or dynamics issues between trustees and beneficiaries, or conflicts between who's acting as trustee and who also might be a beneficiary.

Robben: It affects our planning, too. When a client says, "I guess we will just name [oldest child]," we really try to talk through this. You are hiring for a job. You are not saying who you love best, you literally are hiring for a professional job that carries with it duties and responsibilities. Is the name you just said the right person for this? Do they have time for it? Will they work with professional advisers, accountants, investment advisers?

Holt: With potential tax law changes and overall impact on business in the past 18 months, what are you saying to business owners who are thinking about selling or transferring their companies?

Robben: We discuss the nature of their business and help them evaluate whether this is a good time to transfer or sell. We talk about the company value, the market conditions and help with ensuring the corporate books and records are in good shape for a transfer. Some business valuations are actually up in the past 18 months. They are really thriving, and so it actually can be

a good time to think through exit planning. Do you want to sell to the market? Do you want to sell to a third party [or] look at transferring it to a key employee or family member? Some valuations are higher right now, while others are very low. If it is low, is it just situational and will it bounce back, or has the company run its course? Is it on a downturn and we need to be realistic about that? Are you going to sell it at some point? Are you going to gift it or close it? Business owners recognize that even really strong companies have had a difficult time in the past 18 months. It has also made retirement a little easier to picture for some business owners, because they might have been home more and had a flavor of whether they liked that or not. If the company is well-positioned for a sale, investors are ready as well. Investors have a lot of cash, and they are ready to buy the right companies. So, it actually can be a good time to sell a company if an owner is ready.

Hickman: There's an impetus to potentially realize a capital gain this year as opposed to next year when they might be facing a significantly higher tax rate if they sell in January 2022.

Holt: How is the pandemic affecting how families think about estate planning or who's involved in the process of estate planning?

Robben: I think it has made it more real. Fewer people are saying, "I'm



For most of us walking through the adventure of life, we hope to leave a lasting footprint that inspires our family, friends and community. We hope it matters.

So does Boulay! We help you leave a legacy for the people and causes you love through estate and trust planning—helping communicate your wishes, reduce your tax burden and distribute your assets to the people and organizations most dear to you.

CPAs and Advisors devoted to **HELPING YOU GET THERE.**

952.893.9320

boulaygroup.com

The Hellmuth & Johnson Estate Planning Team

- Business Succession Planning
- Estate Tax Mitigation
- Farm Transition Planning
- Wills & Trusts



Earl Cohen



Tim Davis



Sam Graf



Cole Hickman



HELLMUTH
&
JOHNSON

hjlawfirm.com



Michele Loughrey Tschida



Mallory Moen



Jennifer Rutz



Jeremy Stier

ON YOUR SIDE. AT YOUR SIDE.

healthy, I'm going to live for 40 years." The pandemic has made it too real to people that death does not discriminate. More of our clients seem willing to bring another family member into the conversation. So many people in the past year and a half have a story where the dots have not been previously connected and so it left people scrambling after an unexpected death.

Thermos: I see a willingness of older generations to bring their kids into the conversation and help them understand what's going on prior to death. I don't know how many times I've been involved where the parents thought the kids knew everything that they needed to know. They didn't know anything, and it's really difficult. The reality of a pandemic that could take anybody has helped them understand that having that conversation while you're still alive and letting them know where some of the pieces of the puzzle might be has helped a lot.

Holt: What are the most common estate planning trends and strategies that your clients are implementing this year?

Hickman: Exemption use. The theory is to use your federal estate tax exemption now, this year, which is, as we all know, \$11.7 million, out of fears that that may be reduced substantially at some point. While we are still waiting for more clarity, we have seen draft legisla-

tion that would reduce the exemption to the \$3.5 million to \$5.8 million range. There is a lot of thought surrounding using that exemption now before the end of the year.

Thermos: I've seen a concern about the step-up in basis not occurring. With this unknown, it's hard to give a direction to clients. Have a conversation with them about the use of their lifetime exemption at death versus using it during their lifetime. Helping them understand that lifetime giving may be a better answer if the step-up goes away, because you're getting the asset out of your estate and the step-up isn't a factor any longer.

Hickman: If we're going to try to use the exemption this year, we better be very mindful of what type of assets we're using to fund that trust, the basis of what those assets are, is there going to be a step-up, and making sure we have swap powers to move assets in and out to provide some added flexibility.

Paape: I think overarching all these things, because the exemption is so high, and it is a large gift, it's putting it in a vehicle that could theoretically last forever, I think flexibility has to be key. If we have clients in their 40s and 50s giving away substantial money and using what might be the highest exemption they have in their lifetime, placing that much money somewhere for three or four or maybe more generations is scary without flexibility. That can include

allowing a spouse to get distributions, tax reimbursements, movement of different trusts to different states, adding and subtracting provisions, and allowing for things like special needs and addiction, it has to be part of the conversation. Can this trust own life insurance, own a company? It has to be built because we're parking so much money in it today, and it theoretically has a long time to grow, and it could be the biggest piece of your estate plan.

Holt: Should a client use their estate tax exemption this year, and if so, are there best practices for doing so?

Hickman: They should strongly consider using their exemption, assuming of course that they have the right asset profile. For married spouses, the best practice for most individuals is going to be spousal lifetime access trusts (SLATs) where one spouse is creating the trust for the benefit of the other spouse and other descendants, using that exemption. In some circumstances, it may be appropriate for both spouses to create a SLAT for each other. In that scenario they can use both of their \$11.7 million exemptions. For clients who are not married, you can still create an irrevocable trust for the benefit of your descendants, which is sometimes accomplished through an intentionally defective grantor trust. You can use your exemption that way and put that \$11.7 million into that irrevocable trust for

the benefit of your descendants. Outright gifts to children or grandchildren can sometimes also be considered. You don't necessarily need to use the full \$11.7 million, and you don't necessarily need to use the full \$11.7 million for both spouses. There is value to simply taking growth of certain assets out of the estate. But, in order to capture the currently high exemption, we are typically suggesting that clients consider using at least \$5.85 million.

Holt: So who exactly needs to be concerned about estate taxes?

Hickman: Minnesota residents need to be concerned if they have an estate in excess of \$3 million. Federally, that number is quite a bit higher, \$11.7 million. If you're married, federally, you have the concept of portability, which gets you to a combined cumulative exemption of \$23.4 million. In Minnesota, there isn't portability, so you have to have strategies in mind for Minnesota residents to use that exemption, before the first spouse passes away so that we can make sure that we get a cumulative exemption of \$6 million.

Robben: When we say \$3 million in Minnesota, we literally mean everything, even assets that are not subject to income tax. The two assets that seem to surprise people the most are the death benefit on your life insurance policy and your retirement assets. Even if they are income tax free, they are still subject to



MERISTEM
FAMILY WEALTH



WE CREATED THE FIRM WE WOULD WANT FOR OUR OWN FAMILY

Family wealth is not simply an exercise in preserving and growing substantial capital but also ensuring the capital strengthens the family, empowers its members, and solidifies values and legacy.

Meristem understands and believes family wealth management is as much about family as it is about wealth. For more than 20 years, we've helped families across generations. Talk to us today.

MINNETONKA | NAPLES | SCOTTSDALE | SIOUX FALLS
MERISTEMFW.COM | 888.835.2577

Combining Legal Teams and Talent to Propel Success

The combination of Lathrop Gage and Gray Plant Mooty was finalized in 2020. We unified to offer superior service, more comprehensive legal counsel and more effective support of our clients nationally and internationally. One year later, clients are reaping the benefits of our expanded team, practice areas and geographic reach.

Talk to us about how our legal team can support your business.

800.476.4224
lathropgpm.com

**Lathrop
GPM**

This is an advertisement. The choice of a lawyer is an important decision and should not be made based solely upon advertisements. Neither the highest state courts nor state bar associations review, recognize, or approve certifying organizations, certifications of specialties or specialist designations in the practice of law. The certificate, award or recognition is not a requirement to practice law. Lathrop GPM LLP, 80 South 8th Street, 500 IDS Center, Minneapolis, MN 55402. For more information, contact Michael Sullivan Jr. at 612.632.3000.



estate tax.

Thermos: I use that as an example often; I say, well, your house is worth half a million and you have a \$2 million life insurance policy and you have a million-dollar retirement account. They think life insurance and retirement accounts are not part of their estate and I'm like, "Absolutely, they are." That's why we're educating you before your death! It's a huge factor with people who are under the federal limit but over the Minnesota limit.

Holt: So how would you advise people who have property in multiple states?

Robben: From a nontax standpoint, it is very likely we are going to talk about using a revocable trust so that we do not have probate in multiple states. Oftentimes, real estate in multiple states will lead us to recommend a revocable trust. From a tax standpoint, you do not want to have that other state asset get pulled into Minnesota's tax jurisdiction. If you have a cabin in Wisconsin, that is not subject to Minnesota's estate tax at your death, and we want to make sure we keep it that way.

Thermos: On the flip side, if they maintain a residence here, even if it's no longer their primary residence, their estate is still subject to Minnesota estate tax if their total estate is over the Minnesota limit, not just the piece

in Minnesota.

Holt: How should business owners specifically be thinking about their estate planning right now?

Hickman: One of the things that they should be thinking about is whether their business ownership is a candidate to be an asset to use their exemption. Business ownership interests can be one of the best asset types in order to use that exemption amount, because you can usually get a solid discount for lack of control, lack of marketability, so we're able to supercharge our gifting; instead of gifting \$11.7 million, we're actually gifting something like \$15 million, \$16 million. Business owners aside from that should always be thinking about succession planning during their lifetime. Whether that is gifting shares of the business, whether it's "who's going to run my business if I become incapacitated or pass away?" That's something you always need to think about.

Holt: How can a disclaimer be used in an estate in which a governing will or trust document was drafted under laws that did not factor in the current decoupled federal and state tax exemptions? [laughs]

Thermos: We often have wills or trust documents that were written pre-2012, when the federal estate law split with

Minnesota law, or decoupled. Helping them understand pieces of the Minnesota law, the differences between portability like Cole mentioned, that is part of the federal law but not part of Minnesota law. Explaining how disclaiming assets is a Minnesota substitute for portability like-planning which makes those assets available to fund a trust upon the first death of a married couple. The assets that fund the disclaimer trust are no longer part of the surviving spouse's estate and allow for utilization of the second spouse's \$3 million Minnesota exclusion upon their death.

Hickman: I really like the concept and the flexibility to use that disclaimer. It's nice to have that nine-month window to say, "Hey, how much if any do I want to disclaim, what type of assets should I disclaim?" I think that adds some nice flexibility to planning.

Holt: What is important when examining taxability and estate tax filing considerations in the first death in a married couple?

Thermos: One of the big things we look at is the age of the surviving spouse. Are there assets at a level that's possibly between the Minnesota exclusion amount and the federal exclusion amount? Knowing that that federal amount is likely going to drop on Jan. 1, 2026, do we want to file for fed-

eral purposes just to have that portability in place with the higher exclusion amount? We don't know what the future is going to bring, and if we file a federal return just for portability, that could be a huge tax savings in the future and avoid a lawsuit by the beneficiaries if it were not advised.

Robben: It is also important to look at the cash flow and the asset flow. We do not want to create a situation where we have liquidity in one bucket and not in the other, for the future second death, we want to make sure that there is cash available to whomever needs it to pay bills, taxes and everything that needs to be done.

Holt: What advice do you have for [readers] on anything that we haven't covered today – things they should be thinking about or steps they should be considering?

Robben: From a standpoint of even just 2021, you have to plan ahead. The fourth quarter is going to be phenomenally busy for all of the advisers in this space. Calling us early, even starting on Nov. 1 might not be enough time to get it done before year end.

Paape: Any time we're facing some major tax law changes, or rumors of tax law changes, some people rush to do things that they're otherwise not comfortable with. 2012 was a prime example of people who did a ton of planning, used their exemptions, put them in vehicles they didn't love, pushed forward objectives that weren't theirs; and then they had a little buyer's remorse. I think there's some panic that happens in this fourth quarter and has been happening every time we're facing tax law changes. Make sure you have a good set of advisers you can talk about proactive planning with, they understand your family and your objectives and your goals long before Nov. 1, 2021. You need a lot of discussion about a lot of things, and then they're irrevocable, even if they're flexible and they're modifiable, they're still irrevocable.

Thermos: Don't make decisions or choices about your long-term plan based on only tax reasons. As much as I like people who do that, sometimes they do things that are unintentional. Anne is completely spot on about 2012 and the 2012 panic. From a person who did gift tax returns, 2013 was a nightmare for us.