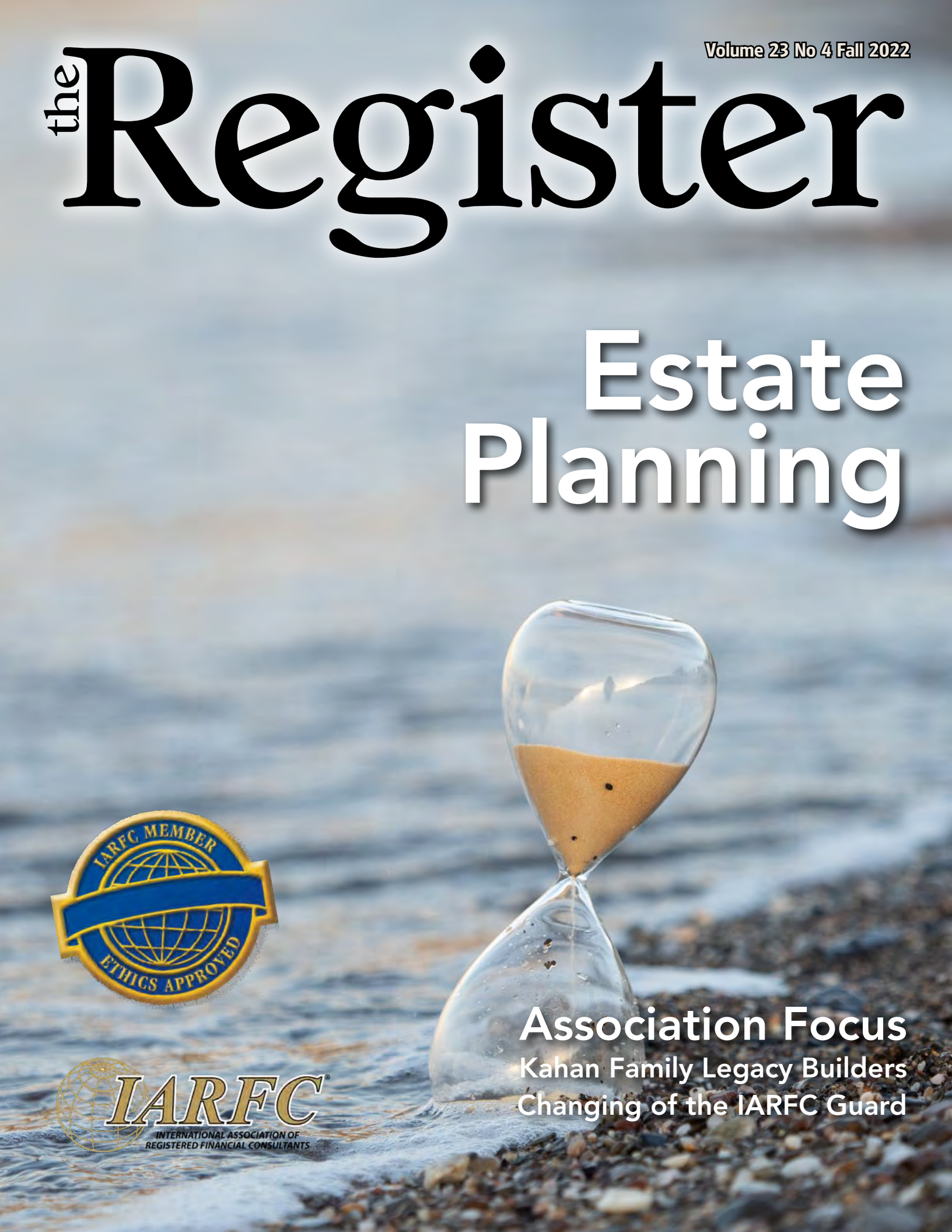
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the Register

Estate Planning



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The Estate Planning Lawyer and Financial Consultant Friend or Foe?

In the 40 years that our busy estate planning boutique law firm has been in business, we have interacted with hundreds of financial consultants. Lawyers sometimes have a bad reputation in the financial industry because lawyer's services are viewed as an unnecessary expense. However, financial consultants are not usually licensed to practice law, and the inclusion of an estate plan into a person's financial plan is a wise decision to ensure that the person's wishes and goals are accomplished upon disability or death. Through the healthy collaboration of the financial consultant and the estate planning lawyer, clients can be rest assured that there is a team in place to give the clients peace of mind that their legal and financial affairs are in order.

The primary way that our firm encourages collaboration between the financial consultant and estate planning lawyer is through the participation of the financial consultant in all of the lawyer's material meetings with the clients. The initial planning meeting in which the clients relay their goals and wishes about the disposition of their assets upon death is especially important for the financial consultant to attend. Often the financial consultant has worked with the clients for many years, so the financial consultant knows a lot about the family dynamics and spending habits, which is important information to facilitate the discussion between the clients and the estate planning lawyer about to whom, and how much, an inheritance should be left to beneficiaries.

Many times, it is the financial consultant who not only can provide valuable input about the decisions surrounding the distribution of a clients' estate upon the clients' death, but it is the consultant who can make recommendations about the most responsible person(s) to put in charge as executor or trustee in the client's estate planning documents. The financial consultant can often provide insight about which family member(s) would be the most responsible estate representative based on the way the family member(s) manages his/her own financial affairs.

Often a widow whose husband handled all the finances during the marriage is unaware of the couple's assets and how much they are worth. In addition, the wife is sometimes completely clueless about the bill paying, bank accounts, taxes, and insurance matters. Many times, it is the financial consultant who has the information needed to assist the living spouse and the estate lawyer with the questions about the surviving spouse's current financial condition. The financial consultant can also work with the estate lawyer to develop a summary of assets to assist with settling the deceased spouse's estate, and to help the surviving spouse develop a plan for financial stability now that his or her spouse is deceased.

One of the main reasons our firm encourages the involvement of financial consultants in the estate planning process is this: it is often the financial consultant who is on the front line of defense in ensuring that our clients' beneficiary designations are done correctly, especially when a trust is involved in a clients' estate plan. Incorrectly designating the beneficiary(s) on assets is one of the main factors why a decedent's estate must be administered through the probate court, and this activity is often directly guided by the financial consultant.

Assets managed by a financial consultant are often required to be probated after a client dies because the client's assets under the management of the financial consultant are not titled properly to avoid probate. When a trust isn't funded properly or the beneficiary designations on an account are not completed, one of the main reasons why the trust or the estate plan was created in the first place is often defeated. If the financial consultant turns a blind eye to this important final step in estate planning (trust funding), the decedent's estate assets may have to be probated before the assets can be distributed. The extra costs associated with probating the estate will reduce the amount of money in the estate (and usually the amount of money the financial consultant manages) and could tie up the estate

assets from being distributed for a long time. In addition, probate sometimes costs exorbitant attorney fees. This specific example of having missing or incorrect beneficiary designations is just one demonstration of the important role that a financial consultant plays in one's estate planning.

Effective, comprehensive estate planning requires clients to disclose everything about their finances to the estate planning lawyer. All the skeletons in the closet must come out for an estate planning lawyer to effectively assist clients with getting their affairs in order. The financial consultant can work with the estate planning lawyer to integrate all the client's investments into the estate plan, ensuring that no assets are left unaccounted for when the client dies. The financial consultant can often also advise the estate planning lawyer of the clients' qualified and non-qualified assets, so that the necessary tax planning can be integrated into the client's estate plan.

The standard operating procedure at our estate planning firm is to involve the financial consultant in the estate planning process from beginning to end, as much as possible. At a minimum, we strongly suggest that the financial consultant attend the initial meeting at the beginning of the estate planning process. In addition, for clients who obtain trust(s), our firm provides thorough instructions specifically designed for the financial consultant that are customized to reflect the clients' specific estate planning details outlined in the trust. The trust funding letter, as we call it, is a great tool for the financial consultant to use to guide clients in assigning the correct beneficiary designations for assets that should be funded into the newly created trust.

While most of this article discusses the importance of the collaboration between the financial consultant and the estate planning lawyer, beware: not all estate planning lawyers are created equal. In Ohio, a lawyer can become certified through the Ohio State Bar Association (OSBA) as a Certified Specialist in Estate Planning, Trust and Probate Law.

Becoming an OSBA Certified Specialist is a rigorous process involving obtaining peer recommendations, taking an additional amount of Continuing Legal Education (CLE) classes in the area of certification, and then sitting for an exam that tests the candidate on advanced topics that pertain to the certification area. The credential adds credibility to the professional that often separates the consultant or lawyer from his or her colleagues.

When it comes to estate planning, clients do not want to hire a general practitioner who practices in many different areas of law or rely on a website that does not prepare state-specific legal documents. To be an excellent estate planning lawyer, one must have a skilled knowledge of the trust code and the laws that pertain to descent and estate distribution in the state where the lawyer practices. The lawyer should also have an in-depth knowledge of federal and state estate taxes and Medicaid laws, too, to assist clients with asset protection planning, a component of estate planning. A lawyer can prepare a simple will, but a simple will may be insufficient to cover all the bases for a blended family, a person who is receiving disability benefits, a couple in a second marriage, or a single person with "fur babies." In most of these examples, a simple will would not suffice and a more thorough will, like the comprehensive wills that our firm creates, would be more appropriate for covering all the bases to protect the client and carry out the clients' wishes.

Instead of hiring a general practitioner, by hiring an OSBA Certified Specialist in Estate Planning, Trust and Probate Law, clients can have the reassurance that the lawyer who is handling their estate planning has the most up-to-date knowledge and credentials. All the partners at our firm, Roberson Law, are OSBA Certified Specialists in Estate Planning, Trust and Probate Law. In addition, our partners go through the extra step to maintain the specialist certification year-after-year. The certification we have obtained gives our clients peace of mind in knowing that not just any lawyer who is licensed to practice law is being trusted with the important task of getting the clients' estate planning affairs in order.

One final point to note about a financial consultant's involvement in the estate planning process is that there have been occasions when a financial consultant will overstep their legal boundaries and will engage in the unauthorized practice of law. A financial consultant's unlawful act of practicing law usually happens when a financial consultant advises their clients that they do not need a trust or advises the clients to do a beneficiary designation against a lawyer's recommendation. Only in a handful of instances in our firm's history have we dealt with a consultant who will instruct clients to go against our recommendations because the financial consultant believes that they know better than we do. It is always an unfortunate situation when disagreements occur between the estate planning lawyer and the financial consultant because, in the end, it is the client who suffers.

As reinforced repeatedly in this article, our firm's belief is that the financial consultant is an important team member to assist with clients' estate planning. The partnership between the estate planning lawyer and financial consultant is an important one to provide the client with the most holistic approach to the client's planning needs.

When legal and financial professionals work together, the outcome is the formation of a team that can provide the most comprehensive help for legal and financial wellness, and peace of mind, not only for individuals today, but also for their loved ones now and in the future.



Nancy Roberson, Attorney

Attorney Nancy Roberson has been practicing law in the areas of Estate Planning, Trust, and Probate Law for over 35 years. In addition to practicing law and teaching the Elder Law course for the University of Dayton Law School, Nancy is the president of Roberson Law, a boutique law firm in Dayton, Ohio that has received numerous awards for the integrity and excellence by which the firm operates.

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