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ESTATE PLANNING LIBRARY

Number Six

Opportunity Shifting

AN OVERVIEW

1. What client might need this technique?

Opportunity shifting is used primarily by:

- Clients who are successful entrepreneurs or who have been successful in earlier ventures and want to avoid increasing their estates with new ventures.
- Clients who are economically comfortable with their assets and want to avoid estate taxes on increases in the value of their estates due to appreciation in the value of what they own.
- Clients who are beginning a new business or investment venture and want their children or grandchildren to benefit from the success of the venture or investments.

2. How does opportunity shifting work?

Opportunity shifting refers to a variety of strategies designed to provide a method for the appreciation in a current business or investment opportunity to be shifted to junior generations. As an example, assume parents are successful shopping center or apartment developers and believe they have an ideal location for a new venture. The parents might contribute $100,000 to an entity (i.e. a Family Limited Partnership, Limited Liability Company or a Generation Skipping Trust) for the benefit of their descendants. The $100,000 is the seed money that enables a bank to loan the funds for the real estate development to the entity. When the entity increases in value, when the stores or apartments are leased, the appreciation in value is held in the entity for the benefit of the parents' descendants rather than needlessly increasing the estates of the parents. In effect, the parents have "shifted" the appreciation in the investment opportunity to their descendants. The parents, as the skilled managers, etc. may collect reasonable compensation for their services, but the capital appreciation for the most part is out of their estates and benefits their descendants, without estate taxes being imposed.

3. How does the client benefit from the use of opportunity shifting?

There are three benefits:

- The parents are able to take advantage of a business or investment opportunity without increasing their estates.
- The parents are able to control the business or investment as trustee, general partner or managing member, so that the business or investment will have the benefit of their seasoned advice.
- The parents are able to be compensated for their personal services in developing and managing the business or investment opportunity.

As an example, assume that parents believe a parcel of real property will be in the path of significant development within the next five years. They decide to purchase the property and put temporary storage units on the property to pay the purchase money debt service until the value skyrockets. The parents contribute $100,000 to an entity and borrow from a lending institution, or lend the money themselves, $900,000 for the purchase and development of the property. The entity for the benefit of the children will own 90%, all financed, and the parents will own 10% because of their contribution. Five years later the property is worth $5,000,000 as a shopping center development. The entity for the benefit of the children will own 90% of the $5,000,000 value, $4,500,000 and be responsible for the balance of the original $900,000 financing. The parents have shifted 90% of the appreciation to an entity for the benefit of their descendants. If the parents develop the property and manage the shopping center, they will be paid for their services.

4. What does the estate planner do in these engagements?

The attorney advises the clients of the potential benefits of using opportunity shifting, generally, as part of an ongoing estate planning relationship. When the clients encounter a business or investment opportunity the attorney will help the client decide if it is a suitable candidate for opportunity shifting. The attorney will consult with the client to design the structures and prepare the necessary documentation to implement the plan. Depending upon the complexity of the business or investment opportunity, the estate planning attorney will work as part of an estate and business planning team to accomplish the shift in value to the descendants of the clients.

5. What are the client's responsibilities?

Responsibility is primarily that the clients must understand the availability of the technique and remember that when they encounter a business or investment opportunity they should discuss with the attorney the benefits to themselves and their descendants of using opportunity shifting.