Innovate or Die

The three big disrupters affecting the future of the estate-planning lawyer

About a year before his death in 2017, Dennis Belcher, past president of the American College of Trust and Estate Counsel, delivered a lecture entitled, “Do We Need a Canary or Did the Canary Stop Singing and We Missed It?” Dennis compared the estate-planning practice to the rigors of coal mining. Miners used a yellow canary to warn them of lethal gases. If the canary stopped singing, it signaled danger, and the miners needed to respond immediately or risk losing their lives.

We are by nature innovators. Every time a lawyer crafts a new argument or creates a new tax strategy, she’s innovating. That innovative energy needs to be focused on how we deliver estate-planning services and counsel.

Dennis’ Joseph Trachtman lecture was an acknowledgment that vast changes are sweeping the estate-planning profession. Let’s explore what some of these disruptions have been and chronicle some of the innovations that are beginning to address these changes. How we adapt to these trends will have a direct impact on the profitability of our practices and our satisfaction with our professional services.

The Three Big Disrupters

If necessity is the mother of invention, then disruption is the father of innovation. Disruptions can be the bucket of cold water thrown over the idea of “this is the way we do something, period!” As Jerri Chou, founder of the Feast Social Innovation Conference, wrote in 2014:

How do we approach innovation not necessarily as disruption but as a process of progression? How do we build on, adapt, and learn from the processes and practices that came before? How can we, like those who design algorithms, look at fractal and exponential growth—the principles we want to put in place and to scale that will allow more natural, abundant, and appropriate behaviors and systems to flourish? Any complexity theorist will tell you: it is the simplest structures that are the most replicable, and that basic rules and principles, when replicable, can ripple out to define seemingly beautiful, complex and natural forms. How can we learn from and apply this to the way that we think about impact in the world? 1

Innovation then isn’t a journey from point A to point B but instead a process of transformation, often triggered by disrupters.

Technology, taxes and taste are the most significant disruptive influences within the estate-planning profession during the last quarter-century. Each has been a catalyst for disruptions to emerge within our profession, suggesting better ways to design, draft and implement estate plans. Some of these innovations are tactical; others strategic; but all are transformative.

Left to right: Timothy J. Belber is principal of the Alchemia Group, LLC in Denver; Ian McDermott is dean of Innovation & Learning at the Purposeful Planning Institute in Denver; and John A. Warnick is founder of The Law Office of John A. Warnick in Denver
plate is equipped for the challenge. There’s a price paid for the turbocharged documents we assemble and deliver. Clients are often overwhelmed by the documents and the process. The use of forms and form engines also increases the risk that clauses working their way into client documents are incongruent with the client’s vision and goals.

Technology is also producing a more efficient estate-planning process. Billing pressures combined with technological advances create opportunities for us to deliver “better” documents with less hours of client interaction. Technology also invites a “one size but two to three colors to choose from” estate-planning process. Some of you are resistive. But, we’re confident you’re feeling greater pressures to deliver a quality set of documents with a diminishing financial return. The most common response is to minimize the time you spend with clients and push the client interface whenever possible to support staff with winning personalities. The outcome of the more efficient estate-planning process is that the price per page of the estate plan is falling, along with overall client satisfaction with the entire process.

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Taxes
Taxes were a huge engine for estate planner prosperity in the 1980s, 1990s and the first 12 years of the 21st century. Tactical innovation was rampant during this period. It was the era of the tax acronyms: QTIPs, QPRTs, QDOTs, GRATs, IDGTs, BDITs, CRATs, CRUTs, CLAT, CLUTs, etc. Hand-in-hand with taxes came the growth of asset protection planning, another major tactical innovation. But, the great tax compromise of 2012 ushered in an era of portability and expanded exclusion amounts. In a flash, the tax canary stopped singing for all but 1 percent of clients. Practices have shifted dramatically for many estate-planning attorneys in the last four years. Income tax planning and expanded asset protection planning are suggested as adaptive change to the disruption in our marketplace. We don’t disagree with that. But, we think that focus ignores larger disruptive influences and opportunities.

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reported that they often administer trust documents over 100 pages.

There’s another valuable lesson relating to innovation within our profession that can be learned from the technological impact on drafting. When word processing was first introduced, many lawyers were resistant. The same has been true with automated document assembly systems. But over time, the power of technological innovations prevailed, and word processing and automated document assembly systems have become the standard rather than the exception. We believe the same will ultimately be true with the other mega-influences we’ll describe.

Technology has become a catalyst for complexity and sterility. The technological ease of creating estate-planning documents has led to the proliferation of boilerplate. The complexity and breadth of boilerplate allow us to prepare for many possible scenarios. We can literally throw in the kitchen sink. Most of those scenarios will never materialize. But if they do, our customary boiler-
Kim and Renée Mauborgne present the “Four Actions Framework” for addressing the need for innovation when an industry is struggling with meeting the needs and tastes of its clients. It’s based on creating a new value curve and offering.

3 To find our “Blue Ocean” opportunities, we begin with four questions:

1. Which of the factors that the estate-planning profession takes for granted should be eliminated?
2. Which factors should be reduced well below the profession’s current standard?
3. Which factors should be raised well above the profession’s current standard?
4. Which factors should be created that the profession has never offered?

Absent some innovative strategy, if we allow what we offer to clients to become increasingly commoditized,
then we’ll inevitably wallow and drown in what Professors Mauborgne and Kim describe as the red ocean of ruthless competition. Estate-planning attorneys who study these disruptive influences and seek to create experiences rather than transactions will discover what these authors describe as the “Blue Ocean” opportunity and will prosper.

Opportunities to Innovate

Some well-known visionaries have been inviting us to adapt to the three great disruptive influences within our profession. These authors have the commonality of creating a call for action for the estate-planning community. We need to recognize and adapt our practices to changing societal factors, including that: clients are living longer; children are remaining dependent on parents longer; and clients are marrying later, postponing when they’ll have children and increasingly choosing not to have children. In addition, there’s been volatility in the tax systems, important shifts in wealth creation and demographics and a more educated, informed and demanding clientele. All of these changes are opportunities for those who will innovate.

So, what shall a professional do to react to the shifts in the estate-planning marketplace? Start paying attention. In an upcoming article, we’ll take a deeper look at what actual innovation may look like in 2018 and beyond. In the meantime, here are a few points to consider for your own innovative thinking:

1. Recognize what you actually deliver. An estate plan isn’t a will, trust and some supporting documents. It’s an interconnected set of legal documents and strategies, human relationships, contracts and economic considerations. All of these are subject to change both by internal and external factors and influences. To sustain the relevance of a plan to a family, we must look beyond whether tax law has changed.

2. An estate plan shouldn’t be a necessary evil in a client’s life. It’s an opportunity for an expression of love, heartfelt hopes and dreams and life wisdom. It’s a risk management tool integral to the client’s financial and family life.

3. We need to balance our discussion about preparing assets for inheritance with one centered on preparing heirs to receive those assets.

4. Consider what additional “non-technical” training you need to be able to assist your clients in protecting and preserving their family and not just their assets.

What Does the Future Hold?

Many are suggesting that as quickly as the death tax may disappear, it could reappear in four, eight or more years down the road. Taxes may no longer be as certain, from a transfer tax standpoint, as Benjamin Franklin once quipped, but we’re certain that innovation will continue to ripple across the estate-planning profession.

Tactical, tax-driven innovation won’t disappear. But, what’s likely is that the three disruptive influences we identified—taxes, technology and taste—will continue to invite innovative approaches in both our design, drafting and delivery of legal services. We’re certain the future holds great change, and the estate-planning lawyer who chooses to invest in discovering how to adapt to these disruptive influences is more likely to thrive and survive.

Endnotes


