By **John T. Midgett**

Professional Collaboration

Embrace teamwork for the best results

Clients typically have a number of estate-planning related issues with which they need our help. Often, to achieve the best results, it's important to collaborate with other professionals. To get a better idea how the various players work together, let's follow a hypothetical attorney, Tom, from the time he learns of possible new clients through his initial meeting with them, and see how he effectively uses teamwork to address the clients' issues.

The Phone Call

It was early on Monday morning when the telephone on Tom's desk rang. It was Janet, a CPA, who, like Tom, was a member of the local Estate Planning Council.

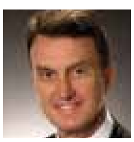
Janet began the conversation by stating that she had clients who were in need of estate planning and asking whether Tom could meet with her and her clients the following Friday at 10 a.m. Tom agreed and asked Janet to describe some of the matters that he should address at their upcoming meeting.

Janet said, "Let me tell you a little bit about my clients, so that you'll better understand their situation. They've been married for over 40 years. The husband, who's 68, owns a small manufacturing business that has good annual sales and is a growing enterprise. The wife, who's 65, works in the business as the bookkeeper. The husband is the sole shareholder, and the business is an S corporation."

Janet went on: "They have three children. Their oldest daughter, Emily, has a Masters in Business Administration and isn't married. She currently works in the business and is capable of running the day-to-day operations because of her education and her experience working for her father for the last five years. She's initiated some new product lines, and the business is about to really take off. She isn't married yet but is engaged. She doesn't have children and probably never will. The clients' only son, Jack, has a few years of college education but has been in charge of sales for the company. He's married and has two small children. The clients' youngest daughter, Charlotte, has never worked in the business. She's a school teacher, married and has one child. My clients think she isn't very good at handling money."

Tom interrupted, "Tell me about the assets that we would be dealing with in this planning session." Janet replied, "I'll fax over a complete list of these items after our call. They include the office/warehouse where the business is located, which is owned by the corporation. My clients have lived a very frugal lifestyle during their early years, as they built this business from scratch. Each of them has contributed to a 401(k) plan offered by their company, and they've amassed almost $1 million in combined retirement savings. They also have investments outside of the business held in a joint account, mostly bonds and some stock funds, but not a lot. They've put most of the profit back into the business. The majority of their wealth outside the business comes from two commercial buildings located near the company's headquarters. These buildings were purchased 20 years ago and have been paid off, so they now produce positive cash flow. Both of these buildings are rented to third parties at fair market value (FMV). Their residence is free and clear after 30 years of ownership."

Later that day, Tom received the financial asset summary prepared by Janet for her clients. As he reviewed it, he began to formulate a list of issues that he would want to address during the initial meeting with Janet and her clients.



John T. Midgett is a principal at Midgett & Preti PC in Virginia Beach, Va.

Initial Meeting

On Friday, Tom entered his conference room where Janet and her clients were already seated. Tom's first question to Janet's clients was fairly simple and one that he often used to encourage people to speak thoughtfully about planning their estates. He asked, "What's important about your family, your money and your values that I need to know to assist you today?"

The husband was the first to respond. "We've worked almost every day in the business. After 40 years, we want to slow down and retire from the daily grind. We want to transfer ownership of the business someday, but I still want to stay in control as long as possible. We want to treat our children equally, but our youngest daughter doesn't work in the business and never will. Our son doesn't have the education or temperament to handle running the day-to-day business, but he's great at sales, and I want to make sure he stays put. We want to provide something for our grandchildren's education and ensure that our children's spouses can't get their hands on any of our money or property in the event of a divorce. And, we don't want taxes to destroy all that we worked so hard for all of our lives." After a slight pause, the wife spoke up. "I'm also worried about our youngest daughter. She doesn't handle money well. She's always in debt, and I'm afraid that her money management skills aren't as good as our oldest daughter, Emily. Emily thinks about money the same way we do. But, I'm also unsure about Emily's fiancé. We just don't know him well enough yet."

> The ABV designation was created by the American Institute of CPAs to provide its members with training in business valuation.

Tom looked down at the list of issues that he'd sketched out a couple of nights before. The clients had touched on almost all that he'd anticipated. Tom looked up from the list and asked the clients, "If you do slow down or retire, what do you plan to do?"

The clients looked at each other and then told Tom, "We would like to travel a little bit, but we don't know if we can afford to do so. We've always worked and we're not sure that we can simply stop. We've been involved with a local charitable organization for the past 20 years, and we would like to volunteer time, and maybe, if we can afford to do so, provide a little money to them after our deaths, so they can continue their good work."

Tom checked the last item on his list, put down his pen and responded, "If I understand you correctly, you would like to address the following issues:

- You want to ensure the succession of your business by one day transferring ownership to your children;
- You want to treat your children equally, but you don't want your youngest daughter to be an owner of the business;
- You have concerns about your children or their spouses that may require providing management of an inheritance to prevent loss;
- You want to secure the cash flow needed in your retirement years to meet your lifestyle;
- You want to reduce or eliminate estate taxes;
- You may need to provide a source of payment for estate taxes that won't affect your business; and
- You're looking for ways to benefit your favorite charity."

As Tom was talking, he observed that Janet and her clients were nodding in agreement, so he went on. "Here's how I propose that we address each of these issues."

Business Succession

"To have one or more of your children own your business, they must buy it from you, receive it from you by way of gift or receive it by way of inheritance when one or both of you die. In most cases, we use a combination of the three transfer events to make the transfer work best for you and your children, in a tax efficient manner. But, no matter which route you take, it's critical that we know the value of that business. We'll need to work with Janet and her accounting firm to get the proper value of your business. That number will be based on many factors, such as cash flow, assets, debts and liabilities, if any, and this valuation should be performed by someone with professional credentials recognized by the Internal Revenue Service, so it will be respected in the event of examination or audit of any gift or income tax return that may need to be filed.

Fortunately, Janet has an accountant on her staff who's been designated as Accredited in Business Valuation (ABV). The ABV designation was created by the American Institute of CPAs to provide its members with training in business valuation. To receive the designation, the CPA must demonstrate experience and competence in business valuation and pass an exam. There are other alternatives for valuing your business, such as a Certified Business Appraiser (CBA), a designation issued by the Institute of Business Appraisers. We could also employ a Certified Valuation Analyst (CVA). A CVA is an active CPA who's passed a 40-hour course and who's recertified every two years. Because Janet has a partner with the APV designation, I suggest that we use her for these valuation issues involving your business, as Janet has been your CPA for many years and has much of the information any valuation specialist will need.

"It's also important to value the office/warehouse that you occupy for your business, as well as the two commercial buildings nearby. Valuation of real estate holdings will be important not only for estate and gift tax purposes, but also for some ideas that Janet and I may develop to provide cash flow for your retirement. We'll want to look at putting the office/warehouse in a limited liability company (LLC), rather than keeping it in your S corporation. This 'spinout' can facilitate some of your goals involving the transfer of wealth to your family and your concerns over equal treatment of the three children. If we move the value of the office/warehouse out of the corporation, it may make it easier for your children to buy corporate stock from you on an installment sale. We should have the properties appraised to get their true FMV. Because these are commercial properties, we should work with a licensed commercial real estate appraiser who's a member of the Appraisal Institute or who has an MAI designation to give us the best opinion as to their value."

Transferring Ownership

"With the valuation of your office building and warehouse and your rental properties, Janet and I will be able to devise a plan to put the ownership of these properties in one or more LLCs, through which you'll be able to control the use of the properties and receive monthly income. This structure will also facilitate the transfer of ownership to your family consistent with your wishes to minimize taxes. Janet's role as your CPA is to help minimize the income taxes that could come due as a result of restructuring your ownership of real property. Also, in making gifts of LLC interests, the use of discounts for lack of marketability and lack of control can help save you significant estate and gift taxes. This is another instance in which a CPA who has the ABV designation can assist us.

> A CFP can also integrate your Social Security benefits and other income sources into this financial plan, so that all of your income sources work together.

Making substantial gifts of LLC membership interest will require that you file a gift tax return. That's another area with which Janet and her accounting firm can help you."

Retirement Planning

"You indicated that you wanted to retire or slow down, but you're worried about having enough money to do so. I recommend that you see a Certified Financial Planner (CFP) whom Janet and I have worked with in the past. A CFP can look at your current stock and bond investments, as well as the holdings in your retirement plans, and assist you in structuring your investments to meet your cash needs as you move into retirement. A CFP can help you identify the income you can expect from the required minimum distributions from your retirement plans, which, along with any income generated from your business or rental properties, will give you a better idea of your post-retirement cash flow and offer the comfort you're looking for so that you can make this important move. A CFP can also integrate your Social Security benefits and other income sources into this financial plan, so that all of your income sources work together."

> Using "key man" life insurance can give you comfort that you'll be paid for the business interests that you might sell to a child.

Management

"I noted that you were concerned about your youngest daughter's financial acumen. You also have some uncertainty regarding your oldest daughter's finances. Usually, in these circumstances, we recommend the use of a trust to manage an inheritance and protect it from creditors and predators. A trust can also help save taxes by providing for full use of both your estate tax exemption amounts and generation-skipping transfer (GST) tax exemptions so that you can provide for your grandchildren's education and other needs and avoid estate and GST taxes when your children die. Long-term trusts are best served by professional managers, and in my experience, the best trust officers have a Certified Trust and Financial Advisor (CTFA) designation. To get a CTFA, a trust officer must have at least 10 years of specific wealth management experience, five years of qualified experience plus a Bachelor's Degree or three years of qualified experience plus completion of approved training programs. He must also pass a comprehensive examination and ethics review. Janet and I work with a number of CFTAs through our local Estate Planning Council, any of whom can assist your family in the administration of the long-term trusts that would be needed to meet your goals."

Estate Taxes

"You also indicated a desire to pay as little taxes as possible. In many cases, this goal can be achieved through the use of a very liberal estate tax exemption amount, currently $5.34 million for each of you. This amount is indexed for inflation, but relying solely on this exemption may not be enough in your case, especially as your daughter expands your product lines. When estate taxes can't be reduced to zero, providing liquidity to pay them becomes very important. We don't want to jeopardize your business or your rental properties by having to borrow against them, or even sell them, to raise cash to pay estate taxes that are due nine months from the date of death. Life insurance can also be used to equalize the amounts passing to your children. If you give the company stock to Emily and Jack, either by gift or bequest, life insurance can provide equivalent value for Charlotte. We also recommend that you consider life insurance to provide a liquid fund to pay taxes. In addition, if you consider selling a portion of your business to your children who are active in the business, usually with a promissory note and a series of annual installments, insurance on their lives may be appropriate. If one of your children were to die prematurely, we don't want to jeopardize your stream of income or require that you go back to work to keep the business afloat. Using 'key man' life insurance can give you comfort that you'll be paid for the business interests that you might sell to a child. Janet and I work with a number of insurance brokers, but we find that a person who has earned the Chartered Life Underwriter (CLU) designation, generally, is the best for these purposes. The CLU designation is obtained by insurance agents who specialize in the use of insurance for business or estate planning purposes. We could also use an agent who has a Chartered Financial Consultant (ChFC) designation, but these agents only tend to embrace general financial planning issues, as opposed to a CLU, which focuses more closely on life insurance."

Philanthropy

"Finally, I noted that you had a strong desire to give to your favorite charity. If we use a charitable remainder trust (CRT) in your estate plan, we might be able to achieve your charitable intent while providing additional cash flow to you. These trusts also have the potential for income tax savings during your life, which could make the transfer of your business and the achievement of your financial goals more efficient from an income tax standpoint. In creating and operating a CRT, all the individuals that we've discussed, the CPA, ABV and CFP, as well as the attorney, work together to fashion a strategy to maximize the cash available to invest and produce income for you. During your life, you receive the payments from the trust, either as a fixed annuity or a percentage of the trust asset value measured annually. At your death, the balance of the trust is paid to your charity. Additionally, if this trust can generate more than the cash flow that you need in your retirement, it could also provide a source of funds to buy life insurance that would replace the financial value of any property you contribute to the trust, so that your children receive the full value of your hard earned assets without any perception of loss. A CLU can assist us in devising a 'wealth replacement' plan using insurance."

The Team Concept

As Tom concluded his summary of the issues thus far, Janet's clients were silent for a moment. The wife was the first to speak, and she turned to Janet and said, "I never realized how complex things had become. But, I want to thank you for your referral to Tom. He certainly understands what we want to accomplish, and he's set forth good ideas that seem to meet my concerns. What I especially like is that he can identify who can help us deal with all of the issues that we need to face."

Janet explained, "Tom and I are both Accredited Estate Planners (AEPs). This is a designation that's conferred by the National Association of Estate Planners and Councils (NAEPC), a national non-profit organization focused on establishing and monitoring the highest professional and educational standards in the estate planning profession. Tom and I both embrace the NAEPC philosophy that the team concept of estate planning, invoking the skills of each of the professional disciplines recognized by NAEPC, better serves our client's needs. Many of the other professionals we work with, such as trust officers, insurance agents and CFPs, also have the AEP designation. In fact, the AEP is the only professional designation that applies to lawyers, accountants, insurance professionals, financial planners and trust officers alike. The NAEPC, whose mission is to promote excellence, professionalism and the team concept among estate-planning professionals, invokes the skills of each of the professional disciplines it recognizes to better serve the public's need for estate planning. Moreover, the AEP designation gives the public a way to identify qualified professional estate planners."

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SPOT LIGHT

Past and Present

"Old Styles and New" (57.25 in. by 45 in.) by Guy Pene Du Bois, sold for $75,000 at Christie's recent American Art Sale in New York on Feb. 26, 2014. Born in the United States to a French family, Du Bois' work depicted the culture and society around him: cafes, theatres and, in the twenties, flappers.