



How to Thrive in the Under \$5 Million Estate Market

By: Philip J. Kavesh, J.D., LL.M. (Tax), California State Bar Certified Specialist in Estate Planning, Tax and Probate Law, ChFC, CFP®



And many practitioners have over the years built successful practices on what I call the “middle market”, that is, estates valued anywhere from \$500,000 to \$5 million.

This level of estate planning practice faces a number of challenges today unlike any we have had in the past. Our services have become commoditized into mass produced documents, with increasing low-priced competition from the internet, do-it-yourself packages, non-attorney paralegals and bargain-priced attorneys. Plus, with the new \$5 million Federal Estate Tax exemption amount, there is now reduced need for advanced level estate tax planning and post-death administration.

Should You Even Stay in the Under \$5 Million Market?

Given all these challenges, I have heard many practitioners say that it is time to quit the under \$5 million market. I couldn't disagree more.

First, the greatest potential market share is comprised of less than \$5 million estates. I have read various statistics which estimate that estates over \$5 million represent less than 2% of the overall estate planning market.

Second, the middle market consists mainly of those described as the “Millionaire Next Door” (profiled in the famous New York Times' bestseller of the same name by Thomas J. Stanley). These are the “Moms and Pops of America”, the great unserved, silent majority, who don't typically have a long-term, fixed attorney relationship. Maybe they have worked with an attorney here or there for a specific matter or maybe for a “one-shot” estate plan, but they have basically been “orphaned” by the legal profession. These are the easiest people to reach, close and get to refer their other friends to you.

Third, if you have a high net worth practice, by also of-

fering planning to the middle market you can generate the cash flow you need to live on while you are “hunting white elephants”.

Fourth, you can develop a volume practice in this middle market that will allow you to retire someday! If you have only a few, high net worth, “high touch” clients that require you to always be meeting with them, it will be much harder to transition them and it will be a far greater risk if you try; if you lose a few large clients, that's a big hit on your total revenue. If you have more of a volume practice, you can gradually turn over your clients to your junior associates and phase down (that's what I've done).

Assuming that I have now convinced you to stay in this middle market, how do you overcome each of the challenges that I've pointed out and not only survive, but thrive?

Fight Back Against Commoditization and Low-Priced Competition

Some practitioners have just ignored these issues and have decided to do something completely different (or the opposite), focusing only on the “high touch” approach, over-servicing a few clients at higher fees. The problem is, in this middle market, will there be enough of these types of clients willing to continue to pay significantly higher fees? Will you be able to generate enough consistent cash flow? And, if so, how much constant work will you have to put in for each client, that will effectively reduce your net profit?

Consider the possibility of having two practice models side-by-side, like low and high end models in a Mercedes Benz showroom. Maybe you can retain your high touch model for larger estates and a different model for estates under \$5 million.

My approach to the under \$5 million market is different

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than the high touch model. I accept that we have become a “commodity” and show prospective clients why mine is better. Where in any industry there is a Coca-Cola, there’s always room for a Pepsi. You can actually leverage off the marketing done by the other competitors in your market. Check out what they offer versus what you offer and show people how to comparison shop as part of your “consumer education” marketing approach.

For example, you can emphasize the importance of counseling as a part of what they get when they work with you, an estate planning attorney. Emphasize that attorneys have, in the past, been called “counselors at law” and how important it is to see a skilled professional to assist with important choices, such as the following. Who should be the Trustee? Should there be Co-Trustees? Independent Trustees? Distribution Trustees? Who should be guardians? Who should be the health decision makers? How and when should each beneficiary receive his or her inheritance in the best manner? And, of course, there is the counseling necessary to resolve special issues with blended families (children of prior marriages), LGBT couples, business succession planning, specific bequests and equalization formulas. Emphasize how there are many decisions to be made, even before “filling in the form” or preparing their document - - and that “one-size-fits-all” planning may be the worst thing that people may do!

You also want to emphasize why your “hard package” (yes, your commodity!) is better and more complete. This is also, of course, how you will justify the value of your higher fees. This is not a technical article, but there are many unique features to your Basic Living Trust plan that probably do set you apart from plans of your competitors - - everything from “flexible” A-B trust provisions, HIPAA and Medicaid features, and custom-fit beneficiary trusts (lifetime, spendthrift, special needs and beneficiary defective asset protection trusts - - with special flexibility features like powers of appointment and trust protector powers). You can also emphasize the additional features of your overall trust plan, what I call the “support mechanisms” that make sure that the plan will actually work properly when the time comes - - things like title transfers, or adjunct materials like an Owner’s Manual and Health Document Emergency Card (such as Docubank). You can also add on, for people with larger IRAs, a Stand-Alone IRA Inheritance Trust. Finish by simply posing the question, “Do those other low-priced plans do all this?”

You also can emphasize service after the sale, which they don’t get from the low-priced competition. Some practitioners utilize a maintenance program at an additional fee, but I favor a free service package approach with the under \$5 million market. I’m not going to get into here the reasons why. In either case, you can provide such things as periodic updates or seminars as laws and planning techniques change, a newsletter, periodic review meetings and a free Trustee meeting when the time comes that the Trustor is disabled or passes. Be sure to “show and tell” prospective clients all the things that set you apart.

Combating the Reduced Need for Advanced Level Estate Tax Planning and Post-Death Administration

Even in the middle market, there are still a few simple, advanced level building blocks that can be placed onto the Living Trust foundation. The key is to emphasize not so much the estate tax benefits of these planning devices, but more so their asset protection benefits, income tax benefits and succession management benefits (keeping assets in the family). When describing these simple advanced techniques to middle market clients, just like with your basic product, you want to emphasize how your advanced product is also superior. Examples of these products are: Dynastic Flexible Irrevocable Gifting Trusts (“dynastic” may mean even utilizing another state situs and by “flexible” I mean power of appointment and trust protector features that permit change of Trustee, beneficiaries and how and when they get their inheritance); LLCs and Self-Settled Trusts, particularly if clients own a business or rental real estate (again, possibly in another state utilizing better asset protection laws); Life Insurance / ILIT, emphasizing estate building and its use later as a “family bank” to acquire more property and wealth or, for use in equalization of bequests, and designing them too as “flexible”); CRTs for sales of appreciated assets without capital gains tax; and, QPRTs as a way to hedge peoples’ bets about estate tax in times of uncertainty, particularly in the middle market where they may not want to make substantial gifts of investment assets they may need later to live on.

Your post-death administration may go down for estate tax purposes, but if you have done better lifetime planning, which includes continuing trusts for beneficiaries (even if they are beneficiary-controlled trusts), you clearly have more opportunity for next-generation planning, such as

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when testamentary limited powers of appointment need to be exercised. And, even if clients come in for administration meetings where there is little more to do than a distribution deed, there is always an opportunity to make referrals to other professionals (who hopefully will refer back to you), such as a CPA or financial advisor, or to work with the client's existing advisors and establish new business relationships.

Obviously, I could go on further in much more detail; however, given the limited space of this article, I trust that this will give you a good starting approach to being successful in the middle market. Perhaps, in a future article, we can address another issue or "challenge" so many practitioners in this market face - - how do you attract and bring in these clients?

About the Author:

Attorney Philip J. Kavesh is the principal of one of the largest and oldest estate planning firms in California, the Law Firm of Kavesh, Minor and Otis. He is also the President of The Ultimate Estate Planner, Inc., which provides a variety of training, marketing and practice-building products and services for estate planning professionals. Mr. Kavesh will be doing a teleconference presentation covering this article topic in further detail. If you would like more information on this teleconference or have a question for him, he can be reached at phil@ultimateestateplanner.com or 1-866-754-6477.