

## Fight Back Against “Commoditization” and Low-Priced Competition

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

The estate planning profession, and in particular the basic Living Trust-centered practice, has been hammered by new challenges. There's the proliferation of Internet “zoom” document providers and do-it-yourself trust kits (Suze Orman and the like). There are non-attorney trust mills increasingly grabbing market share (often in violation of the state statutes prohibiting the unauthorized practice of law). And there are bargain-priced, low-end attorneys (many of whom have jumped aboard the Living Trust craze from other areas of the law) who now compete for your business. How do you meet all these challenges?

One approach may be to disregard this commoditization of our practice and instead offer the opposite “high touch” approach. This approach emphasizes detailed counseling and customization of each and every estate plan. While this may work with high net worth clients, will clients in the middle market be willing to pay significantly higher fees and will you attract enough of both these client types to generate the cash flow you need to stay profitable? And, will this high touch require more, continuous work by you and your staff that will eat into your profit margin?

Instead of fighting commoditization, perhaps you should just accept it and emphasize why your commodity is better (and commands a higher price). Study and know your competition. Line up your estate plan details against theirs. Find out exactly what their documents look like and what, if any, services beyond just documents that they provide (such as title transfers and other items to be discussed below). Even if your estate plan “package” is not significantly different from your competitors, you can still utilize “preemptive advantage” by telling consumers the details that your competitors fail to bring up. For example, your competitors may not be touting how they package their documents in a helpful portfolio book; if you



tell consumers you are providing such a book – – before they do – – you win! When Miller Beer first came out with its mass campaign differentiating itself in the marketplace as producing “cold-filtered” beer, other companies were already doing this, but the others failed to tell consumers and Miller took control of the market first!

Better yet, you can use both approaches, a combination of the high touch/emphasis on counseling approach, as well as a commodity or product approach. This is what I do and have done successfully for many years.

Emphasize the importance of “counseling” as part of a proper estate planning process. Explain you are a “counselor at law”, not just someone that fills in blanks on a form. Utilize the following doctor analogy when speaking to a prospective client. “Did you realize that for most prescriptions you

may need, you could just go to the pharmacist? Most of the time, the pharmacist can recommend a generic, over-the-counter solution without you having to first get a doctor prescription. So why do you go to a doctor? You go to the doctor for his or her professional experience and expertise, his or her judgment and advice. You want the doctor to diagnose your situation carefully, make intelligent and correct treatment recommendations and then leave the choice up to you as an informed consumer, right? This is why you need to come to an estate planning attorney. We help counsel you through all the important decisions and key details of your estate plan.” You can further point out to a prospective client the numerous specific areas where counseling is of critical importance. The choice of trustee, guardian and health decision maker. How and when each beneficiary should properly receive his or her inheritance (whether in a staged distribution trust, lifetime trust, spendthrift trust, special needs trust, or generation skipping asset protection trust). Show how you can help resolve special issues that often come up in the estate planning process, particularly with blended families (having children of more than one marriage), LGBT couples, business and rental property owners (“What will your heirs do with your lifetime’s work when you die? Sell it or wreck it?”). You need to emphasize how important decisions in estate planning must be made *before* “filling out the form” and that estate planning is not “one size fits all”. Tell the prospective client they can feel free to go LegalZoom but emphasize that people come to you – – an attorney who specializes in estate planning – – for your experience, expertise, wisdom, judgment and *counseling*.

When I talk about counseling, another thing that’s really important when fighting back against commoditization and low-priced competition, is to establish yourself as a “specialist”. You may be able to become a board-certified specialist in your state and, if so, you should do it as soon as possible! I know some attorneys feel that by getting their specialist certification, they will raise their malpractice liability; the truth is, you already have that level of liability if you’re doing a lot of estate planning, you can get malpractice insurance, and you should not let fear hold you back from pursuing a successful practice. If you can’t get board certified as a specialist or it will take too long or you just choose not to do so, you should at least emphasize your other credentials (such as WealthCounsel or NAELA membership or special continuing education programs attended) as well as your years of experience in the estate planning field. Even if you don’t have significant credentials or experience, you can associate with other “of counsel” attorneys who have such credentials and experience and emphasize that you work closely with them in developing client plans. You may want to go even further and carve out a specialty niche within the general field of estate planning, such as Medicaid planning, special needs trust planning, pet trust planning or asset protection planning.

Also emphasize why your “hard package” is better and more complete – – a superior product. Here are just a few things that you may point out as setting your product apart:

- Use of a “flexible” (or disclaimer activated) A-B trust for married couples. (Even though we now have estate tax exemption “portability”, the A-B trust is still often better for many married couples. With this type of flexible A-B trust, the client enjoys the benefit of 20-20 hindsight – – when the first spouse dies, the survivor can then determine the size of the estate and size of available exemption, and evaluate existing portability rules to determine which works better (or possibly use a combination of both). You can not only build into the A-B trust the flexibility to create it or not, but the flexibility to later terminate it if it’s no longer needed (such as through the use of an independent, third party Trust Protector).
- HIPAA/Medicaid planning/disability planning features. (Many plans I see do not have the appropriate planning provisions for these situations; they merely act as a testamentary Will substitute).
- MAPT. (Few of your low-priced competitors do any Medicaid planning and, even if a prospective client can’t or doesn’t want to qualify for Medicaid, just introducing the concept of a Medicaid Asset Protection Trust sets you apart.)
- Custom-fit, flexible beneficiary trusts. (Not merely outright distributions or all at a certain age, but beneficiary-controlled, generation skipping and asset protection trusts with special Trust Protector provisions; see [The Personal Asset Trust Legal Document Form Package](#).)
- Title transfers into the Living Trust and periodic checkups to be sure after-acquired assets are handled. (Emphasize the failure to do this is “why many Living Trusts fail!” and that you can “pay me now or pay me later (in conservatorship or probate)!”.)
- Adjunct materials or “support mechanisms” – – not legal documents, but items that will help assure that the legal documents will be properly implemented when the time comes. (Like an [Owner’s Manual](#), [Successor Trustee’s Manual](#), [Beneficiary’s Manual](#), [Health Document Emergency Card like Docubank](#) and Trust “ID Card”).

- **IRA Inheritance Trust®**, also known as standalone IRA beneficiary trust (to maximize required minimum distribution “stretchout” and the tax-free compounding of assets for needed support of heirs in later years, but also asset protection of inherited IRAs and other qualified retirement plans from divorces, etc.)
- **Your “free service package”**. (“If you buy a car, don’t you want to know what service package they have available to help maintain that car so it stays in good running order?”) We’ll leave the further discussion of this free service package – – and why I do *not* recommend the use of an annual maintenance fee program – – in next [month’s article!](#)

My personal marketing “guru”, Jay Abraham, once pointed out succinctly and poignantly, “the more you tell, the more you sell!” When you show prospective clients all of these details that set you and your products and services apart, simply then conclude by asking them, “Do you think the do-it-yourself and bargain-priced plans provide you with all of this?” Engagement “closed”!

My point of all this is simply...don’t just give up, without a fight, your bread and butter Living Trust-centered practice!

## ABOUT THE AUTHOR

**Attorney Philip J. Kavesh** is the principal of one of the largest estate planning firms in California - - Kavesh, Minor and Otis - - now in its 32nd year of business. 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. If you would like more information or have a question for him, he can be reached at [phil@ultimateestateplanner.com](mailto:phil@ultimateestateplanner.com) or by phone at 1-866-754-6477.



*Image courtesy of stockimages at FreeDigitalPhotos.net*