

Introduction

Estate planning involves more than just assisting with the transfer of a client's wealth from one generation to the next. To draft a customized plan that achieves a client's unique goals, an estate-planning practitioner must understand the client's values and convictions and, in many cases, his or her religious beliefs. For many clients, passing on these beliefs and traditions is just as important as, if not more important than, the distribution of their physical assets. As advisors, it thus behooves us to acknowledge and address our clients' religious considerations when conducting their planning.

For Muslims, estate planning is not merely an expression of an individual's love for his or her family, but also an act of religious devotion and a form of worship. Islam, like many other faiths, contains rules relating to the dispositive provisions of a person's wealth that are binding upon members of the faith. Aspects of the faith tradition also inform the decisions a client may make with respect to advance directives and end-of-life healthcare choices.

This book is intended to serve as a practice guide for attorneys interested in providing faith-based estate planning to a large and growing segment of the Muslim population in the United States.¹ Enjoying above-average median household income and roughly \$100 billion in disposable income, America's nearly six million Muslims are projected to become the second-largest religious group in the country by mid-century.

Like all clients, Muslims who seek the services of a competent estate-planning attorney are looking for someone to assist them in protecting their loved ones, preserving their assets, and ensuring family harmony.

1. See *The Muslim Green: American Muslim Market Study 2014–15*, DINARSTANDARD, <http://www.dinarstandard.com/american-market-2014/> (last accessed Sept. 19, 2018); Michael Lipka, *Muslims Expected to Surpass Jews as Second-Largest U.S. Religious Group*, PEW RESEARCH CTR. (Apr. 14, 2015), <http://www.pewresearch.org/fact-tank/2015/04/14/muslims-expected-to-surpass-jews-as-second-largest-u-s-religious-group/>.

Additionally, however, many Muslim clients are motivated by a desire to comply with a religious obligation to distribute their estate in accordance with a robust set of rules known as the Islamic Law of Inheritance. Others may wish to ensure that end-of-life care decisions be made in a manner consistent with Islamic bioethics, while still others may wish to memorialize their desire that certain funeral and burial rites be administered in accordance with Islamic law. As such, this subfield of estate planning requires unique cultural insight and a foundational knowledge of Islamic law.

Attempting to integrate a complex set of inheritance rules and ethics on top of existing state and federal tax laws might seem like a formidable task. Indeed, prior to the publication of this practice guide, we were unable to identify any other book that filled this purpose. But after years of assisting Muslim clients and counseling other attorneys on how to effectively provide such services to their clients, we are pleased to make this information more broadly accessible. Our goal in doing so is to outline various considerations of Islamic law that are applicable in the estate-planning context in order to provide practical guidance to attorneys who are drafting and administering estate plans for their Muslim clients.

In explaining this subject, we rely on existing scholarship, case law, and statutes in the American legal tradition, as well as rules articulated in classical Islamic religious texts. Since we believe that having a familiarity with a limited amount of Arabic terminology is necessary to attain religious literacy in this practice area, we have retained original Arabic terms in several places throughout this book. Whenever we use a non-English term for the first time, we define it in the immediately corresponding text. Since one need not read this practice manual from start to finish, explanations of all such Arabic terms also appear in the glossary.

We have elected to illustrate various legal principles and concepts through easy-to-understand examples and hypotheticals. The names used in these examples are common names and do not reflect actual cases. Any resemblance to actual persons or events is purely coincidental.

The Kind of Client This Book Can Benefit

In the United States, people are typically free to leave whatever they want to whomever they want after they die, with the exception of a surviving spouse, whose share is protected under most state laws. On the other hand, a Muslim client seeking to plan his or her estate consistent with Islamic law would choose to do so based upon certain rules stipulated in

the Quran, the Muslim holy scripture, and the *Hadith*, the normative traditions of the Prophet Muhammad.

Of course, not every member of a faith tradition adheres to all the rules of that tradition all the time. Many attorneys do not ask about the religious background of their clients, and sometimes, even if the topic arises, it may not impact the nature or implementation of a client's stated objectives.

If a client appears to be from the Muslim faith tradition but does not request that any requirements of the client's faith be incorporated into his or her estate plan, the attorney would certainly not be obligated to ask. Some attorneys may choose to inquire, others may not.

But if our own experience combined with the recent spike in demand for Islamic financial products is any indication,² an increasing number of Muslim clients are seeking to plan their estates in accordance with their faith and values. This book is intended to address the needs of those clients. Specifically, it will help an attorney answer the question "How can I design an estate plan—including any charitable planning, estate-tax planning, healthcare directives, burial instructions, and other common estate-planning considerations—consistent with my client's religious preferences?"

At first blush, some elements of Islamic inheritance law—which are similar in their level of detail to a state intestacy scheme—may seem unconventional and might give the drafting attorney pause, most notably with respect to the treatment that Islamic inheritance law provides to certain female heirs. While we do not believe that representing clients who voluntarily seek to adhere to a set of constitutionally protected religious principles constitutes an explicit or implicit endorsement of those beliefs, we do suggest that if an attorney ultimately does not feel comfortable drafting an estate plan consistent with the client's faith, he or she should refer the matter to another practitioner who is able and willing to represent the client.

That said, one of our goals in writing this book is to provide solutions for clients who are seeking to adhere to a set of classical religious obligations while recognizing the practicalities of contemporary life in America. Throughout this book we highlight various planning opportunities in this regard and will identify the most common issues that arise when planning for a Muslim client. Since every client scenario is unique, it may

2. Islamic financial assets worldwide shot up to more than \$1.3 trillion in 2012 from less than \$600 billion in 2007. See Mohammed Aly Sergie, *The Rise of Islamic Finance*, COUNCIL ON FOREIGN RELATIONS (Jan. 30, 2014), <http://www.cfr.org/economics/rise-islamic-finance/p32305>.

be advisable in many cases for the drafting attorney to retain a religious advisor or consultant to assist with the understanding and application of Islamic inheritance law to a particular client's situation.

Finally, in addition to benefiting estate-planning attorneys, we hope this book will also serve as a useful reference guide for accountants, financial planners, trust officers, and private fiduciaries serving Muslim clients, as we believe that demonstrating sensitivity to a client's religious concerns and wishes should be an integral component of the estate-planning and administration process.

A Note about *Sharia*-Compliant Estate Planning

There is perhaps no term in today's popular discourse more often misunderstood than the word "*Sharia*," loosely translated as Islamic law. The idea of drafting a *Sharia*-compliant estate plan for a Muslim client may make a practitioner nervous, as the term is routinely associated with negative portrayals of Islam and Muslims. This book is intended as neither a refutation of those accusations nor a rebuttal against such tropes. Rather, this book will provide readers with a basic level of religious and cultural literacy regarding Islam and Muslims in America in order to better serve their clients. We will define the term *Sharia* and explain how Islamic inheritance laws interplay with federal and state laws.

As in all matters of law and theology, there may be a multiplicity of views among religious scholars on any particular issue in the tradition. Since this is fundamentally a book designed for legal practitioners and not one that ventures into theological discussions, we will at times need to make certain legal determinations about what is or is not permissible under Islamic law. In doing so, we will attempt to be as middle-of-the-road as possible. For the most part, we will rely on the Hanafi school of jurisprudence, which is one of the four major schools in the Sunni legal tradition. The Sunni schools of law do not differ significantly in matters of inheritance law, though certain nuances do arise in individual cases. We also separately describe the inheritance rules of the Jafari (Ithna Ashari) school, which is the largest Shia school of jurisprudence as well. Where major differences of opinion exist within the traditions, we will highlight them as well in an effort to provide the practitioner with appropriate tools to counsel the client.

How This Book Is Organized

Estate planning is a complex area of law. We assume the reader has a basic understanding and familiarity with conventional estate-planning concepts and tools. This book is not intended as a replacement to treatises on general estate planning, nor does it purport to cover every scenario that a client may present in one's office. Rather it is intended as a way to provide practitioners with an authoritative "Islamic perspective" on many estate-planning options the practitioner may consider.

In Chapter 1 we introduce the reader to the American Muslim community, one of the most ethnically and economically diverse faith communities in the United States. We will also outline the basic tenets of the Muslim faith, provide an introduction to Islamic law and its sources—including explanations of the terms "*Sharia*" and "*Fiqh*" (schools of Islamic jurisprudence)—and highlight some important Islamic financial principles that are often implicated in conventional estate planning.

Chapter 2 provides an overview of some ethical, legal, and public policy issues that may be applicable when planning for a Muslim client. We will discuss joint representation of a married couple and the use of spousal waivers, address potential Establishment Clause issues, and review certain public policy objections that may be levied by an heir under Islamic law.

Chapter 3 will cover estate-planning considerations during a Muslim client's life. This includes religious practices during life, rules relating to marriage and divorce, ownership and distribution of jointly owned property, investment-related restrictions under Islamic law, retirement planning, and *zakat* and lifetime gifting.

Chapter 4 addresses later life planning and end-of-life care issues, including incapacity planning and Islamic bioethics relating to advance healthcare directives, funeral arrangements, organ donations, and disposition of remains.

Chapter 5 will detail major issues relating to the disposition of property at the time of death, including how the default succession rules under Islamic inheritance law in the Sunni and Shia traditions interplay with state law and federal tax laws.

Chapter 6 provides practical guidance on drafting estate-planning documents for Muslim clients.

Chapter 7 will outline planning opportunities for individuals and assets located outside the United States.

The appendixes will provide detailed tables of heirs under Islamic law and several sample estate-planning documents, including advance health-care directives and a sample will and living trust that can be readily modified and incorporated into a Muslim client's estate plans.

Finally, the glossary provides easy-to-reference definitions for all the Arabic terminology used throughout this guide.