FROM SHIRTSLEEVES TO SHIRTSLEEVES IN THREE GENERATIONS

I. INTRODUCTION

Estate planners focus on the givers of the wealth (their clients) when drafting an estate plan. We discuss what the clients want for their beneficiaries and how to achieve that goal. While advocating for your client's desires is tantamount to skilled representation, we should not overlook the beneficiaries and whether they are prepared for what the giver of the wealth has planned for them. They may not know that frugal Mom was actually a millionaire or that spendthrift Dad was down to his last penny. Unfortunately, the beneficiaries may have made different choices during their life if they had known. On the other hand, the beneficiary may already know what is to come from their inheritance which may lead to choices that prohibit them becoming a contributing member of society.

II. WHAT IS HAPPENING?

Although there is a societal tradition in leaving inheritances to children, inheritances overall have decreased.[1] A 2017 survey found that only 40% of baby boomers are planning to leave an inheritance whereas 68% of their millennial children have an expectation of receiving one.[2] Many people are not fully prepared for retirement, much less leaving an inheritance. In fact, a quarter of Americans have no retirement savings at all.[3]

Of those Americans that are on track to leave an inheritance, a 2015 HSBC survey found they expect to leave an average inheritance of $177,000 to their heirs.[4] Another survey said of those that will be leaving an inheritance the median amount reported is $69,000, with the least wealthy leaving an average of $6,000 and the wealthiest one percent leaving an average of $2.7 million.[5] Unfortunately, no matter the amount, the trends indicate that once the money is received, it is spent. It takes the average recipient of an inheritance 19 days to buy a car.[6] One study found that one-third of heirs that received an inheritance had negative savings within two years of the gift.[7] Of course, the larger the gift, the longer it lasted.[8]

Even for the larger inheritances, studies have found that 70% of the time, family assets are lost from one generation to the next and gone 90% of the time by the third generation.[9]

Despite the client's time, effort, and money toward creating an estate plan, the goal may be squandered by the beneficiary. There should be focus on why that is the case as well as defining the best tools to avoid it happening.

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[1] Phillips, Kate. *Should You Leave Your Children an Inheritance?* Partners4Prosperity.com, April 6, 2018. https://partners4prosperity.com/should-you-leave-an-inheritance/.

[2] *Id.*

[3] McCarthy, Niall. *Report: A Quarter of Americans Have No Retirement Savings*. Forbes, June 3, 2019. https://www.forbes.com/sites/niallmccarthy/2019/06/03/report-a-quarter-of-americans-have-no-retirement-savings-infographic/#4237f6f43ebf

[4] *Average Inheritance: How Much Are Retirees Leaving to Heirs?* NewRetirement, May 22, 2017. https://www.newretirement.com/retirement/average-inheritance-how-much-are-retirees-leaving-to-heirs/

[5] *Id.*

[6] Taylor, Chris/Reuters. *70% of Rich Families Lose Their Wealth by the Second Generation.* Money, June 17, 2015. https://money.com/rich-families-lose-wealth/

[7] McCarthy, *supra* note 3.

[8] *Id.*

[9] Smith, Anne Kates. *5 Strategies to Keep Your Heirs From Blowing Their Inheritance.* Kiplinger's Personal Finance, November 2015. https://www.kiplinger.com/article/saving/T021-C000-S002-5-strategies-keep-heirs-from-blowing-inheritance.html

III. WHY IS IT HAPPENING?

When preparing an estate plan, there is a focus on wealth transfer techniques to avoid estate tax and minimize income taxes. These techniques are clearly a necessary step for our clients, but don't help the family develop an infrastructure to sustain the wealth.[10] No matter the estate plan or investment strategy, if the next generation fails to generate their own wealth, it's just a matter of time before the money runs out.

There are multiple factors like grief, substance abuse, inflation, economic downturn, family growth, and life expectancy that could provide answers as to why this is happening. From an estate planner's perspective, there tends to be a few leading reasons: lack of estate planning, lack of planning for a specific beneficiary, family conflicts, lack of financial literacy, and lack of communication.

A. Lack of Estate Planning

1. No Plan At All

Estate planning is a fantastic tool for saving money during the probate administration and for getting the client's estate where they want it to go. Unfortunately, this has not resulted in most Americans taking the time to complete their Will. One study estimates that less than one-third of Americans have a Will or other type of estate planning document.[11] Those that do not have a Will leave their estate to pass by the intestacy laws of their state, which is expensive and likely delays the distribution of the estate.

The distribution of the client's estate, when they do not have a Will, depends on a number of factors: a) whether they are married and have separate or community property, b) whether they have children, c) whether they have children with their current spouse or from a prior marriage, and d) who their family members are if they pass away without a spouse or children. These circumstances may lead to family members having shared interests in property when they aren't able to compromise or get along with one another. They may have to make important decisions about an asset such as whether to sell and how to value the property. These decisions can create power struggles and even more expense and delay for the beneficiaries.

Another disadvantage to having no Will is the lack of tax planning. Estate planners can use trusts and other vehicles to reduce potential estate taxes for families but there isn't much that can be done after the person passes away. Nevertheless, although estate and income taxes play a role, assets expand arithmetically, and families expand geometrically.[12] This means the family wealth will be spent at a faster rate by the next generation. Regardless of the amount of wealth, fees and expenses, taxes, inflation, and consumption will decrease the amount of wealth.[13]

2. No Plan for Specific Beneficiary

a) **Minor beneficiaries.** If lack of thorough estate planning results in a minor beneficiary receiving assets with no trust or management system in place, it could be costly to have someone authorized to manage their inheritance until they reach the age of majority.

[10] *Id.*

[11] *2020 Estate Planning and Wills Study.* Caring.com, 2020. https://www.caring.com/caregivers/estate-planning/wills-survey

[12] Morris, Richard A. and Pearl, Jayne A. Kids Wealth and Consequences: Ensuring a Responsible Future for the Next Generation, Bloomberg Press, (2010).

[13] *Id.*

The courts may require a guardianship or court created trust for the child. Although implemented for the protection of the beneficiaries, these approaches can be expensive to implement and maintain. It may also mean the funds are distributed outright to the beneficiary when they reach age 18. With a contingent testamentary trust or similar vehicle, there is a consideration as to what age is most appropriate for the beneficiary to receive distributions or the assets from the trust or estate. For example, a Trust provision could mandate that a beneficiary wait until they are 25 or 30 before receiving funds.

b) **Substance Abuse.** A windfall of money would not be beneficial for an addict or recovering addict. By way of example, the cost of cigarettes or a 6 pack of beer is around $8.00. This equates to a monthly cost of $240 for daily use. If this were a more expensive drug or more severe habit, you can only imagine how quickly the monthly cost would rise. Of course, the toll of an addiction costs more than the drugs themselves. Consider the loss of productivity or loss of income that could arise from the loss of employment or worse, a jail sentence. This loss of employment results in the inability to add to social security, resulting in lower retirement benefits, making it very hard to financially support themselves into retirement. Additionally, there are costs associated with rising healthcare and insurance costs, legal fees and fines, and liability if the beneficiary causes an accident or damages property. Additionally, the impairment would most certainly result in the heir being careless and frivolous with the inheritance.

Although it might seem like substance abuse does not impact wealthy clients, it is actually a very common problem for the high net worth group. Indeed, "the affluent youth reported more frequent substance use than their inner-city counterparts, with consistently higher use of cigarettes, marijuana, and illicit drugs."[14] In addition, "the affluent youth reported more significantly higher levels of anxiety" which may impact the beneficiaries daily living or employment.[15] These concerns should prompt estate planners to provide extra protection for these beneficiaries.

c) **Special Needs.** Beneficiaries with special needs need extra consideration during the estate planning process. If an intestacy situation or simple Will causes them to inherit money outright, it could disqualify them from receiving government or other benefits. An elder law attorney may have to be hired to reinstate the benefits.

B. Family Conflicts

1. Will Contests

It is no secret that litigation is expensive. Will contests are no exception. How much it costs depends on the complexity of the case and the issues involved. If the Will gets declared invalid and there is no alternative Will, the estate will pass according to Texas intestacy laws. The disadvantages to intestacy are described in the section above.

Furthermore, the Will isn't the only document that can be litigated. A breach of

[14] *Id.*

[15] *Id.*

fiduciary duty case may be brought against an executor, trustee, or agent if a beneficiary thinks that a power has been abused. There could also be guardianship litigation if there weren't clear instructions on who should serve in that role and what discretion they have to help manage the affairs of their family member.

These contests require financial resources but can also take a significant emotional toll. Once the litigation is settled, the family must still wrestle with possible jointly owned assets and resentment between family members.

2. Divorces

With half of marriages ending in divorce, the costs associated with the proceedings are a concern for married clients. A quick google search shows the average *uncontested* divorce costs between $10,000 and $30,000 in attorney's fees and other expenses. These costs are increased (sometimes significantly) if there are issues between the separating spouses such as custody battles and child support, spousal maintenance, and a dispute over disposition of assets. The more complicated the assets, the higher the cost.

The cost of divorce continues long after the divorce is finalized, as there may be spousal maintenance, child support, and the potential expense of an additional household. Expenses increase further if there are multiple marriages ending in divorce.

3. Jointly Owned Assets

Although most parents or families want to give their assets away equally to their beneficiaries, it sometimes is not the best decision for the people involved. If beneficiaries don't get along or have different ideas about how the business or property should be managed, it may create a stalemate in moving forward with important decisions. Beneficiaries that jointly own property must decide how to run the business, when to sell the business or property, how much the selling price should be, etc. This type of problem occurs in intestacy situations because the estate is divided equally, regardless of the circumstances of the particular estate (one daughter may be running the business but all children will receive an equal portion). Furthermore, this sometimes results in a stepparent inheriting with their stepchildren. The parties have to work out how to share expenses and make decisions together.

Unfortunately, even if there was a Will, most are silent with how to handle these sticky situations and the beneficiaries remain in conflict.

C. Lack of Financial Literacy

Estate planning is very important, but it can only go so far for each family. No estate plan is going to prepare or help a beneficiary maintain their inherited wealth. Beneficiaries still need skills like investing or budgeting their money, how to run the family business, and how to create a family legacy themselves. It is up to the client in the estate planner's office to also implement strategies to guide the family towards financial longevity.

Even if every member of future generations lives a moderate lifestyle and manages the family money wisely, descendants are unlikely to maintain that affluence without each future family member generating further wealth. Even if the family feels they have enough wealth for their beneficiaries to not be their own wealth generator, the next generation will still lack the financial savvy to be in control of inherited wealth. Indeed, 78% feel the next generation is not financially responsible enough to handle an inheritance.[16]

Some wealthy parents are looking for a trust that will turn their children into

[16] Phillips, *supra* note 1.

thoughtful, responsible, and successful people. Obviously, that will not be the case without guidance.

Young adults who are raised and continue to live extravagantly, who do not understand how to manage a credit card or balance a checkbook, and who develop sloppy financial habits may not appreciate money is still a finite resource. The client will have to serve as a role model for their beneficiaries. If the client lives lavishly, the beneficiaries may assume they will be able to do the same. If the client lives frugally and the beneficiaries inherit vast sums, they need to be prepared emotionally and intellectually to handle that wealth.[17]

What the client is spending will affect not only how much the beneficiary will inherit but also the lifestyle the beneficiary has grown accustomed to. The client's spending patterns impact their expectations and career decisions.[18] If the client expects the beneficiary to work after college and wants their entry-level salary to cover their living expenses, it may be a mistake to give them huge allowances in high school and during college.

Keep in mind that even if you or the client believe that it is in bad taste to discuss money, they are communicating their beliefs, values and attitudes about spending on a daily basis.[19]

Moreover, this isn't just about children. There have been several instances where the surviving spouse was not involved in the handling of the finances and was left unprepared and overwhelmed when their spouse died.

D. Lack of Communication

Some parents fear that communicating the amount of inheritance to the beneficiary will turn them into entitled and unmotivated adults. They also fear that their beneficiary will be less likely to appreciate the things that have been given to them because they did not earn them, or that the inheritance will sabotage their ambitions or independence.[20]

According to one consulting group, 70% of family businesses only last one generation. While research shows 25% of the time it's due to a failure to prepare the next generation for leadership and stewardship, 60% cite a lack of communication and trust among family members.[21]

E. Outside Factors

There are certainly outside factors at play for why wealth isn't sustained through younger generations. According to Forbes, the price of college is increasing almost eight times faster than wages.[22]

Additionally, there are always concerns of downturns in the economy which occurred recently with the Coronavirus recession and the 2020 stock market crash.

Finally, our society is changing (and aging). The family's wealth will need to sustain the family growth and the increased life expectancy of our generation.

These outside factors are unpredictable and unavoidable, at best. The focus for attorneys should be to help their clients with the things that can be controlled.

Although not every contingency can be avoided, clients and their beneficiaries can be advised on what they can do to help their

[17] Morris, *supra* note 12.
[18] *Id.*
[19] *Id.*
[20] Phillips, *supra* note 1.
[21] Balentine, Robert. *Avoiding the "Shirtsleeves to Shirtsleeves" Phenomenon.* Balentine, November 6, 2018.https://balentine.com/insights/blog/shirtsleeves-to-shirtsleeves/

[22] Maldonado, Camilo. *Price of College Increasing Almost 8 Times Faster Than Wages.* Forbes, July 24, 2018. https://www.forbes.com/sites/camilomaldonado/2018/07/24/price-of-college-increasing-almost-8-times-faster-than-wages/#19bbf73a66c1

legacy last and sustain through generations. This includes estate planning, financial education for their beneficiaries, and communication techniques.

IV. WHAT THE ESTATE PLANNER CAN DO

A. Estate Planning Techniques

There are several advantages for the implementation of an estate plan. An estate plan ensures the estate distributes assets correctly, quickly, and as cost efficiently as possible. Estate planning also creates a plan for incapacitated or minor beneficiaries. It also saves the families from making hard decisions if the client should later become incapacitated. It can provide for funds to a favorite charity or smooth the transition for new leadership in a business.

To ensure that smooth transition, the client should assemble a good team of investment managers, tax preparers, estate and trust attorneys, and mentors.

For specific language for estate planning documents, see “Planning for the Unexpected: Drafting for Beneficiaries who Can’t (or Won’t) Protect Themselves” by Harry Wolff III (Estate Planning and Probate Drafting 2017).

1. Trusts

Trusts are not just for the wealthy. Trusts can be a good tool for structuring a legacy and are flexible enough to fit to the circumstances of your client’s family. They can help beneficiaries with spending problems, substance abuse issues, and minor beneficiaries. Trusts can also be an effective way to keep separate property characterization in case a beneficiary intends to marry or inherits property while contemplating a divorce.

a) Type of Trust. Incentive Trusts are very flexible. They are designed to encourage or discourage certain behaviors from the beneficiary to be able to receive distributions from the trust managed by the Trustee. You can create a host of different scenarios or mandates that can include virtually any condition in order to receive the distribution. The distributions can be tied to financial statements, employment, drug testing, academic enrollment or performance, substance abuse treatment, etc.

A spendthrift trust protects beneficiaries from themselves by providing a trust with the authority to control how the beneficiary can use the funds. A spendthrift trust requires specific language and includes limitations on the beneficiary’s control of the funds.[23]

Trusts can also build in flexibility to be amended if there are changes in the tax laws or changes in the client’s family situation. If a beneficiary has or develops special needs or a beneficiary has substance abuse problems, the trusts can be tailored to support that particular beneficiary.

Trusts do have potential disadvantages. If you put too many conditions on the distributions, it starts to become inflexible and unworkable. It may leave the Trustee with an impossible scenario that the estate planner and client would never have anticipated. For example, trust distributions are often tied to education requirements because Mom and Dad want their child to be

[23] Ruce, Philip J. *How to Keep Your Heirs from Blowing Their Inheritance*. Kiplinger, June 5, 2019. https://www.kiplinger.com/article/retirement/T021-C032-S014-how-to-keep-heirs-from-blowing-their-inheritance.html

productive. But what if their child leaves college to start a successful business? The Trustee may not have the authority to give distributions even though the child has fulfilled Mom and Dad's ultimate goal.

b) Letter of Intent/Wishes to Trustee. One solution may be to give the Trustee broad discretion regarding distributions but leave a letter of intent that details the client's desires and long-terms goals. Although this letter is not legally binding on the Trustee, it may help give a sense of the reasoning behind the mandates or conditions detailed in the trust to help the Trustee make the appropriate decision.

c) Trustee Selection. A most repeated phrase: Serving as a Trustee is a "job, not an honor." Unlike an estate executor, a trustee for a beneficiary (especially a younger one) is typically a long-term job. While financial institutions are often named to serve as Trustee, they can be expensive and don't have the personal familial knowledge that a family member or friend would have while serving as Trustee. It is important to keep in mind the family dynamics that will be at play when choosing a Trustee. If Brother has money problems or substance abuse problems and Sister is serving as Trustee, it might cause a rift in their relationship because Sister is now controlling Brother's access to "his" money. An overview of the client's specific situation and a discussion with the Trustee about what is involved will go a long way in choosing the best person to serve as Trustee.

2. Business Succession Plan

If one of the significant assets of the family wealth is a family business, be sure to structure the company and ownership to ensure the most tax efficient transfer and smooth transition of ownership.

Some examples include intentionally defective grantor trusts (IDGTs), grantor retained annuity trusts (GRATs), valuation discounts through family partnerships, and transfer vehicles.

3. Beneficiary Designations

Recently there has been a trend of a large portion of the family's wealth being held in retirement accounts and life insurance. These assets will not pass according to the distribution scheme in the Will or Trust but pursuant to the beneficiary designation. Be mindful of these designations for minor children to avoid the need for court-created trusts. Likewise, avoid naming an individual person when the intent was to have money go into trust for their benefit and not outright.

4. Charitable Giving

Involving the children in philanthropy is a way to teach money management and to build a deeper understanding of family values. Some examples of particular techniques (that also may have tax incentives) are direct gifts, private family foundations, donor-advised funds, and charitable trusts. See "Planning and Administration Issues Associated with Private Foundations and other Charitable Vehicles" by Jeffrey N. Myers and Megan C. Sanders (Advanced Estate Planning and Probate 2018) for additional information.

A family foundation connects family members around something meaningful and important and it helps the family engage with their community.[24] It also has the benefit of involving the children in financial decision making without having to divulge the family's worth.[25]

5. Questions to Ask

a) Do you believe your beneficiaries should have their inheritance in a trust instead of outright?

b) Do you believe there should be conditions on the distributions from the trust?

c) Do your beneficiaries have any substance abuse problems?

d) Are any of your beneficiaries on government assistance?

e) Does your potential Trustee know about your ultimate goals for your beneficiaries?

f) Does the Trustee know and interact with your beneficiary?

g) Should your beneficiary be Trustee of their own Trust past a certain age?

h) Should the beneficiaries get the assets of the trust outright at a certain age or condition?

i) If you already have trusts in place, do the beneficiaries know about their existence or the extent of the trust assets?

j) Are the trusts flexible enough to adapt to future changes in the law or your family's situation?

B. Minimize Conflicts

If the family is likely to have some type of conflict, upfront discussions surrounding the issues will likely be the most cost effective and efficient use of the estate plan.

Depending on their situation, broad discretion may be helpful to discourage a disgruntled beneficiary from contesting the Will or involving the Trust with litigation. Make sure they have all the documents relevant to any situation that may arise. For example:

1. Declaration of Guardian if it is foreseeable that the kids may fight over who is guardian over Mom.
2. Power of Attorney appointing the responsible child and not the spendthrift child to help avoid costly Guardianship.
3. Will to make sure there is an estate plan in place.
4. Trust to thwart the possibility of a contest, as trusts are harder to contest as they are created and implemented years before the client dies.

Although most parents swear their kids "get along just great," it may be wise to avoid naming siblings as co-executors or co-trustees just because "it is fair." Co-executors, co-trustees, and co-agents may lead to conflict and delayed probate conclusion if they cannot agree on key aspects of the administration. Likewise, the oldest child doesn't necessarily translate to the most responsible child or child best for the task. Encourage your clients to discuss who would truly be best for each task.

If a disgruntled beneficiary is likely, consider a no-contest clause. No-contest clauses can deter the family member from challenging the Will though estate planners differ on whether they are actually effective. Whether or not a contest clause is included, be sure to implement all provisions clearly in the estate plan to avoid confusion or ambiguous interpretations.

Even if the children DO get along great, the relationship with the children's spouses may be a different story. The best time to bring up premarital agreements is before your client's child becomes involved in a serious relationship, so the child does not think their parents distrust their partner. It allows them to have the discussion with their potential spouse long before the talks of

[24] Morris, *supra* note 12.

[25] *Id.*

marriage begin.

Questions to Ask

a) *Do your beneficiaries know about your financial situation?*

b) *Do your beneficiaries know about your potential estate plan? Would anything surprise them?*

c) *Do you anticipate someone being upset?*

d) *Are they expecting assets be left outright to them instead of in trust?*

e) *Do you believe that all beneficiaries should get the same amount of inheritance regardless of their individual circumstances?*

f) *Do you believe that all beneficiaries distributions should be subject to the same trust conditions or mandates?*

g) *Do your beneficiaries get along?*

h) *Do they know your intended use for a particular asset? Examples include family business, family ranch, family foundation, etc.*

i) *Would your beneficiary be willing to get a premarital agreement?*

C. Encourage Financial Education

"Estate Planning is a process to transfer wealth, but it doesn't help the family develop an infrastructure to sustain it, or keep the family unified from one generation to the next."[26] While still a crucial step for families, another important step is getting them to talk about their concerns and develop a strategy for the estate plan to be successful.

It could be beneficial to use the money during the client's life to help the beneficiary start a business or obtain an education. Money could be used to help them fund a foundation, provide the down payment for a first home, or provide a mentor to help them toward a worthy goal to ensure the money is being used for productive reasons.[27]

If the money will only be available after the client dies, the client needs to be sure the beneficiary has some financial literacy. 87% of parents believe their children learn everything they need to know about money from school; 90% of students said they learn everything they know about money from their parents.[28] What this statistic indicates is parents aren't taking the time to be influential in the education of their children.

There are three strategies that could be used to help teach financial literacy: having the beneficiary maintain a job or career, having the beneficiary practice financial management, and having the beneficiary participate in educational programs.

a) **Working.** Working provides many benefits. It enables the beneficiaries to be productive, helps develop relationships with different types of people, helps them handle rejection or failure and, as my grandmother would say, "keeps you off the streets." It also enables them to be their own wealth creator. It counters their sense of entitlement, prevents them from remaining dependent, separates their identity from their wealth, helps them develop confidence, instills a desire to give back to society, and allows them to be good stewards of wealth for future generations.[29] Indeed, "capacity to work" during their youth predicted future earnings, mental health, and the ability to sustain relationships as adults.[30] If the beneficiary has never had to work, then a job or volunteer position will help push their financial literacy forward.

[26] Phillips, *supra* note 1.
[27] *Id.*
[28] Morris, *supra* note 12.
[29] *Id.*
[30] *Id.*

b) **Practice Makes Perfect.** Make sure the client's child knows how to budget, the importance of saving, the accumulation of interest, and how to invest.[31] If possible, the client should provide funds to invest and teach them how to invest those funds before they inherit significant wealth. If children are prepared to invest and develop healthy spending and saving patterns early in their life, they will be better equipped to implement those strategies on a larger scale when they inherit. They will also have some experience on prioritizing and making financial decisions.

c) **Boot Camps.** Many private wealth management firms, trust companies, bank wealth departments, multi-family offices, and other financial institutions offer financial education classes and seminars for the children of their high-net worth clients. The syllabus includes managing credit, debt, and cash flow; managing an investment portfolio; protecting wealth and managing risks; understanding property and marital rights; enhancing interviewing skills; learning negotiating skills; improving leadership and communication skills; and understanding the psychology of money.[32]

Questions to Ask

d) Do your beneficiaries know the basics of money management?

e) Are your beneficiaries emotionally prepared to handle an inheritance?

f) Are they financially stable on their own or will they rely on their inheritance for their daily living?

g) Are they relying on their inheritance for their own retirement?

h) Have your beneficiaries shared investment decisions or otherwise learned how to manage assets?

i) If they are not otherwise supporting themselves, are they operating on an allowance or budget?

D. Encourage Communication

There is no bright line rule for when to communicate about the family wealth as it largely depends on the client's beneficiaries and situation. Some children will need to be informed early of the family wealth or financial situation because they will be taking over the family business. Other children may be overwhelmed with issues in their lives and the family wealth may add to their anxieties.

The book Kids, Wealth, and Consequences recommends the "drip, drip, drip" method which encourages communication of the family's values to beneficiaries over time and through different techniques. The first technique is the encouragement of family talk. The client and their beneficiaries talk in a plane, car, or over dinner about their expectations and the family's expectations to help foster communication and ideas with the beneficiary. Next is the establishment of family traditions. This gives the family a sense of security and helps the generations stay connected. The third method is family mentoring whereby the older generations mentor the younger generations. Mentoring encourages the potential beneficiary to participate in the family business and it creates a sense of honor and work ethic. The fourth method is education programs.[33] Educating the beneficiaries does not have to be complicated. Simply taking the time to teach them how the company or family's

[31] Balentine, *supra* note 21.
[32] Morris, *supra* note 12.
[33] *Id.*

financial statement works or encouraging them to do their own research is a good start to financial literacy.

Although all these strategies are important and should be implemented, "the single predictor of staying out of trouble is family dinners."[34] Family meals provide an opportunity for the family to strengthen their bond and build on their relationships. It also encourages enhanced self-esteem because it increases their sense of belonging. Mealtime is a great occasion to instill financial knowledge and strategies and lay out what the clients expect in terms of spending, saving, and giving back, as well as long-term strategies for building wealth.

The Aspen Family Business Group researched which best practices kept those who were close knit together and created a list of ten qualities shared by family businesses that have lasted for more than two generations. The list includes: shared values, shared power, traditions that define how the family is different than other families, willingness to learn and grow, activities for maintenance of relationships, genuine caring, mutual respect, assist and support one another, well-defined interpersonal boundaries, and trust.[35]

Questions to Ask

a) Have you communicated your expectations for a potential inheritance to your children?

b) Have your children communicated what expectations they may have from a potential inheritance?

c) Will your beneficiaries be able to adjust their lifestyle if they do not receive an inheritance?

d) Do your beneficiaries know your financial advisor or accountant? Does your team know your beneficiaries financial or education needs?

e) What legacy do you hope to leave behind to your family's future generations?

V. WHAT THE PROBATE ATTORNEY CAN DO

A. Probate Practices

1. **Probate the Will (or otherwise transfer title).** Sometimes beneficiaries incorrectly assume probate is not necessary for title to transfer to them after a death. One example can be especially troublesome: if all bank accounts are payable on death, or joint ownership with rights of survivorship, or pass according to a beneficiary designation, then the assets are distributed directly to the beneficiary, leaving a lack of cash for the Estate. The beneficiary will be left in a tough spot with potential delays in selling or transferring the home to allow time for a probate administration. Be sure to discuss the necessity of probate and the deadlines for filing with the beneficiary.

2. **Pay Attention to the Assets.** Many inheritances include IRAs or other retirement accounts. Be sure to speak with the beneficiaries about the taxes involved in such inherited plans. Keep up with changes in the law regarding these accounts (see SECURE Act passed in 2019 which changed retirement account rules). There could also be specific stocks or bonds where they need guidance on the best way to transfer or whether to liquidate. It may be best to work their accountant or financial advisor if this area is unfamiliar to you.

3. **The Family Home.** Much of the time, there is a family home that Mom or Dad were living in when they died. This creates a question of what to do with the property. There are three options: the beneficiaries can live in it, sell it, or rent it out. Each option comes with advantages and disadvantages.

[34] *Id.*

[35] *Id.*

a) **Selling the House.** Inherited property receives a new income tax basis equal to the fair market value of the property when the person died. Typically, this is a "step-up" in basis. If the beneficiary's parents bought the property decades ago for a low price and it is now worth significantly more, this stepped-up basis means the beneficiary will not have to pay capital gains on that increased value. The beneficiary's cost basis will be the value of the property when it was inherited. This makes for a good time to sell the property.

b) **Moving into the House.** This can be tricky if the inheritance only consisted of the home and little to no liquidity. If the beneficiary is planning to move into the home, there are some potential obstacles. One arises if there are multiple beneficiaries. If there are several siblings inheriting their parent's home, but only one moves in, that particular sibling may not have the resources to buy out the other siblings and may have to pay them rent or otherwise compensate them. This cost is in addition to the taxes due on the property. They may be able to claim the full homestead exemption due to the "Heir Property" change in 2019 which allows an heir to claim the homestead exemption on inherited property even if not all the owners/beneficiaries of the property reside there. However, the over 65 exemption will be gone if they have not reached that age when their parent died. Unfortunately, this may mean the beneficiary cannot afford to live in the inherited house.

If the house was inherited with some liquidity, the beneficiary may struggle with whether to pay off the mortgage or use the inherited cash in some other way. Depending on their situation, it may be better for them to pay off high-interest debt, save enough for emergency expenses, or put the money toward their own retirement. If the beneficiary uses the money to pay off the mortgage and then the housing market dips or an unexpected job loss or expense occurs, it may jeopardize the beneficiary's financial situation.

c) **Renting the House.** If the market is in a downturn or the beneficiaries would prefer to hold on to the property, the beneficiaries may choose to rent out the property. This can be an option to help cover the expenses for the home but comes with some extra responsibilities. Renting the property will likely require one of the beneficiaries to take care of the property or require the hiring of a property manager which costs a percentage of the rental income.

B. Encourage a decision-free zone. It is helpful for the beneficiary to take some time to evaluate their next move. Exhibit A includes a (certainly non-exhaustive) checklist of items for a beneficiary to consider when receiving an inheritance.

C. Seek the guidance of professionals. Encourage them to assemble a team of people to guide them and tailor a plan that is specific to their situation. A probate lawyer can help with the administration and the transfer of assets, but the beneficiary should look to their own financial advisor and tax professionals on how best to use these assets.

D. Help them with their own Legacy

Encourage the beneficiaries to utilize the strategies listed above and implement the tactics in their own personal finances as well as financially educating their family members. Help them recognize the importance of devoting significant time, attention, and thought to how they can strengthen their family's cohesiveness and financial savvy.[36]

Every ten to twenty years, the family should revisit its values, vision, and mission statements to factor in how the family, its business, its wealth, and the world have changed, and to welcome the next generation's input about any revisions that will keep it relevant and meaningful to current and future family members.[37]

VI. CONCLUSION

The key to a successful inheritance is passing on a legacy of more than just money.[38] When money is passed generationally devoid of mission, purpose, values, and love- without the human, social, intellectual, and spiritual capital that shaped the founder's legacy, family wealth can be squandered and lost.[39] However, when money is passed down with know-how, guidance, wisdom, purpose, and values to well-nurtured recipients, beneficiaries can become the best possible stewards of that wealth.[40]

The take-away should be that the money the client leaves should not be the primary gift. Instead they should pass on a legacy of more than just money.[41] Encourage your client to educate their families so they become both receivers of wealth and of financial wisdom.

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[36] *Id.*
[37] *Id.*
[38] Phillips, *supra* note 1.
[39] *Id.*
[40] *Id.*
[41] *Id.*

EXHIBIT A

Checklist for Beneficiary

1. Probate the Will or otherwise administer the estate to get assets properly titled. Be sure to keep up with deadlines to avoid delay and extra expense.
2. Get a clear picture of finances.
    a. Will this inheritance increase any expenses?
    b. If you are inheriting a home, there will be costs associated with the property (taxes, upkeep, repairs, etc.)?
    c. Should any liquidity be used to pay off your own mortgage or the mortgage on the inherited property?
3. Review Statements and Bills. Review monthly statements and monthly bills to see if the costs can be shut off or the plan lowered.
4. Get a clear picture of priorities
    a. Do you want to establish a fund for your children's education?
    b. Do you want to establish a fund for your grandchildren's education?
    c. Are you set for retirement? Be sure to research how much would be required.
    d. Do you have an emergency fund established?
    e. Do you have high-interest debt?
    f. Are there any life events coming up that the money should be saved for? Child going to college, a daughter's wedding, a potential divorce, etc.
    g. Is there a cause or charity that you would like to donate to?
5. Minimize Taxes. Can you rollover the IRA? Speak a financial advisor. Be sure taxes are paid before spending money (or before distributing if you are also the executor).
6. Separate the money. It is easier to spend if mixed with your current account. If separated, it is easier to maintain separate property characterization if not co-mingled.
7. Be mindful of scams and those taking advantage of grieving families:
    a. "Advance Inheritance" websites that claim to give you money in three days for your inheritance. These typically come with high rates and cost more money in the long-term.
    b. Mailers that claim they will buy the inherited property (usually for very cheap) to take advantage of someone needing to get rid of the property fast or not wanting to deal with it.