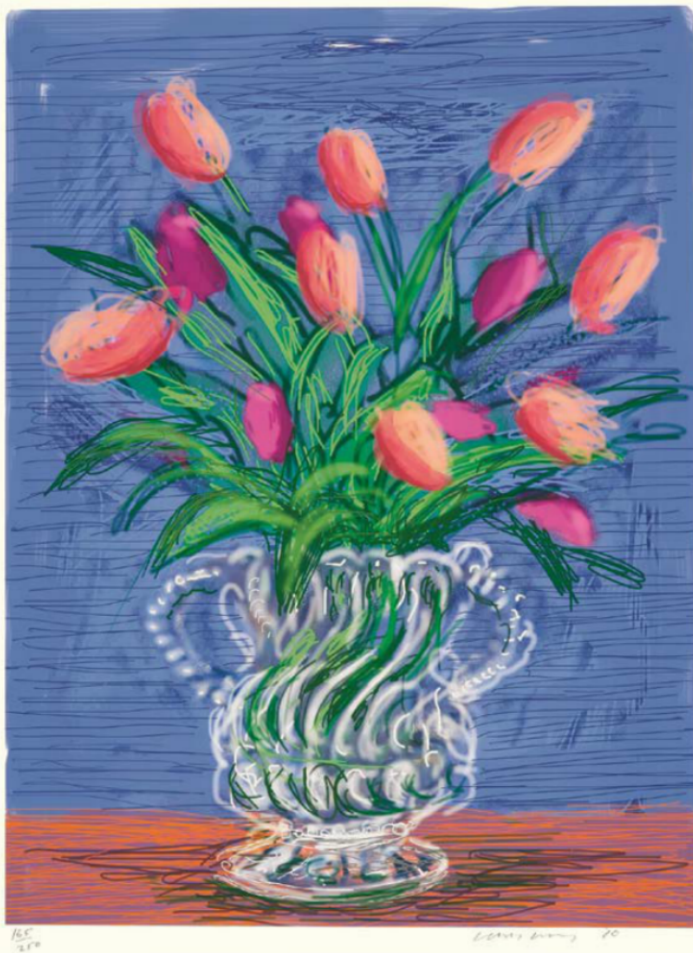


TRUSTS & ESTATES

The  WealthManagement.com journal for estate-planning professionals



Kiss My Two Lips—Flowers (17 1/4 in. by 13 in.) by David Hockney, sold for \$12,431 at Sotheby's recent Prints & Multiples auction in London on April 4, 2017, p. 4.

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By **David R. York** & **Andrew L. Howell**

GRATs or Gratitude?

What's wrong with traditional estate planning and what to do about it

In the last 20 years, Americans have experienced unprecedented change in virtually every aspect of their lives, from technology and social issues to demographics and the economy. For example, in 1996 there were roughly 77 million worldwide Internet users who could visit just over 250,000 different websites.¹ In 2016, the total number of worldwide Internet users exploded to over 3 billion who had access to over 1 billion different websites.²

Estate planning has also experienced tremendous change. In 1997, the federal estate tax exemption was \$600,000 with a 55 percent top federal estate tax rate. Estate planning was primarily done by the Greatest/Silent Generation who were, at the time, between the ages of 52 and 70. More than three-quarters of them viewed wealth transfer as “very important,” with more than one in five believing that they owed their children an inheritance.³ (See “A Different Planning Perspective,” this page.) In general, they were willing to sacrifice lifestyle to maximize wealth transfer, and they were willing to add legal complexity and cost to do so. They were the generation of family limited partnerships, irrevocable insurance trusts and annual gifting.

Fast forward 20 years, and both the tax environment and views on wealth have dramatically shifted. The estate tax exemption in 2017 has ballooned to \$5.49 million and that increase, along with the creation of portability, has eliminated estate tax concerns for more than 99 percent of the U.S. population. Beyond

the tax law changes, Baby Boomers (now themselves between the ages of 52 and 70) think that wealth transfer isn't nearly as important as their parents did and feel much less obligated to leave an inheritance or sacrifice lifestyle to do so. Less than one-half of Baby Boomers think wealth transfer is important, and only 3 percent believe they have any obligation to leave their children anything. Fewer Baby Boomers are implementing wealth transfers during their lifetime, when compared to the Greatest Generation (9 percent versus 34 percent, respectively), and 72 percent of Baby Boomers plan on doing their own estate planning differently from their parents.⁴

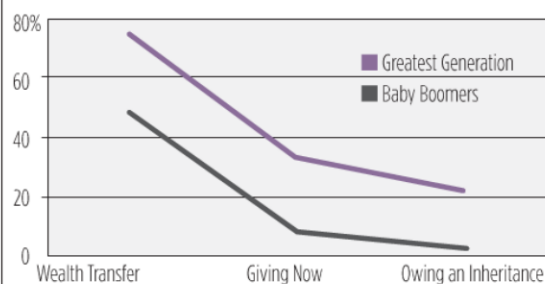
All this isn't to say that Baby Boomers don't care about the next generation. Baby Boomers are far more concerned about legacy than are the Greatest Generation (75 percent compared to 53 percent, respectively), how their children can and should use inherited funds (32 percent versus 9 percent,

David R. York, left, and **Andrew L. Howell** are managing partners at York Howell & Guymon in Salt Lake City



A Different Planning Perspective

Fewer Baby Boomers are implementing wealth transfers during their lifetime



— David R. York & Andrew L. Howell



FEATURE: THE MODERN PRACTICE

respectively) and preserving family history (86 percent versus 74 percent, respectively). These numbers represent a huge and ongoing shift in the views of wealth transfer that continues to widen with successive generations.⁵ (See “A Huge Shift,” this page.)

Among affluent families, the disconnect between what their current estate planning does, and what they want their planning to do, is staggering. While 75 percent of wealthy parents say it’s important to leave an inheritance to the next generation, only 20 percent agree strongly that their children will be prepared to handle the wealth they receive. Although 54 percent of the wealthy believe their family would benefit from developing a formal set of principles to guide the purpose and meaning of their wealth, only 10 percent of them have done so. And, while the affluent are looking for customized solutions, fully one-half of them think that their current estate plan is too complicated.⁶

Traditional Estate Planning

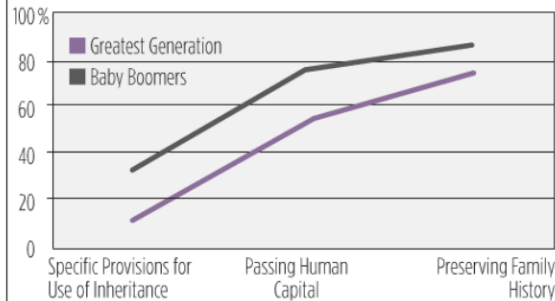
Traditionally, estate planning has been asset focused, and as a result, it rarely considers the individuals, personalities and unique dynamics of each family. It’s based on a linear way of thinking; that is, if transferring some wealth is good, it follows that transferring more wealth is better.

In addition to being asset focused, traditional estate planning is too often generic, resulting in a cookie-cutter approach. Many estate plans are written in the third person, with the only personal information being an inclusion of the individual’s name and sometimes the names of the children. The plans tend to be focused exclusively on financial assets and taxes. Estate-planning software has only increased the generic nature of planning.

Traditional estate planning also tends to be tool driven, which leads most planners to jump to strategies that pass along economic capital without considering an individual’s or family’s human capital.⁷ All too often, estate planners focus on transferring financial resources using the alphabet soup of GRATs, DGTs and SCINs without contemplating how to transfer the values that helped create that wealth to begin with, like gratitude, wisdom and determination. Not taking human capital into consideration when planning the transfer of wealth would be like asking a contractor to build your vacation home, only to have her start by telling you how many 2x4s, shingles and windows will be needed. It makes no

A Huge Shift

Baby Boomers are more concerned about legacy



— David R. York & Andrew L. Howell

sense to start building something without first knowing what you’re building and why.

Finally, because many people have learned to think of estate planning as a transaction rather than a relationship, they believe their estate plans are done, and yet, most of us would never say that our family is done. We’re constantly and consistently trying to educate and empower our family members. Families are growing, learning, adapting and developing, as is the ever-changing Tax Code. Estate planning should reflect that state of continual evolution, but traditional estate planning all too often remains static, as most estate plans go unreviewed for years. The problem with this static model is that there’s no room for it to adapt and evolve into new and better paradigms.

A New Kind of Planning

Estate planning that’s designed and intended to meet the demands of the 21st century should look and feel different from traditional planning. First and foremost, it should be beneficiary focused and more concerned with preparing future generations to maximize their own potential than about transferring financial wealth for the sake of the wealth. The planning should focus on what’s needed to accomplish this goal, not implementing tools first with no cohesive end goal beyond the transfer of financial wealth.

Second, it should be customized and based on the specific goals, values and beliefs of the client. A multigenerational wealth plan can’t be built on outdated assumptions. Before any lasting plan can be implemented,



it's critical to first identify the values, vision and mission of the family. The planning needs to recognize that families are unique, and their planning should also be unique. As you read an estate plan, you should see that it's custom built and considers the specific situations, people and resources that make up each family and its wealth. Only after you know the goals will you have the ability to know when and how to use the tools.

Third, it should be purpose driven. Trusts, limited liability companies, charitable strategies and other

wealth-transfer devices should be seen as nothing more than tools to accomplish the family's goals. The key to being purpose driven is to focus on what provides for family continuity and not just on what provides for financial continuity. The ideal plan is one in which the purpose drives the estate planning, and the estate planning supports the purpose.

Finally, because a family changes over time, the plan should include regular conversations as well as maintenance and updating to stay relevant and effective. Imagine paying someone to come in and design an award-winning backyard, put it in place and declare



SPOT LIGHT

Shapely

Cornish Girl by Bryan Ingham sold for \$14,769 at Sotheby's recent Made in Britain auction in London on April 5, 2017. When Ingham announced to his parents that he intended to become a painter, they delightfully, but mistakenly, thought he meant a house painter and decorator. Nevertheless, they were supportive of him throughout his career.

The one-size-fits-all mentality of traditional estate planning can cause disastrous results as you travel along the wealth continuum.

it done. It wouldn't take long for weeds to overtake it. While a plan may be up-to-date for any given period, it's never completed. This means an effective plan should be consistently reviewed and updated as new family members enter the picture, individuals age, desires change and Congress changes tax laws.

It's important to note that many of the tools of modern estate planning serve important functions. Financial and medical powers of attorney, wills and revocable living trusts are critical tools that every adult should thoughtfully implement. That type of foundational planning is critical to effectively provide for individuals and families in the event of disability or death, regardless of the size of an individual's estate. In fact, for most families, foundational estate planning is all that's needed from a legal standpoint. That said, the one-size-fits-all mentality of traditional estate planning can cause disastrous results as you travel along the wealth continuum. Many professional planners are either unaware of the possibilities or uninterested in assisting their clients in developing a truly tailored and personal plan. Instead, they focus on the volume of clients and turn their practices into trust mills. (See "Two Types of Planning," p. 22.)



FEATURE: THE MODERN PRACTICE

How to Retool

Recognizing that the shifting marketplace is important, the question then becomes: How do I, as an estate planner, adapt to this changing environment? Here are four easy steps to implement into your practice today.

- 1. Expand the team.** For years, estate planners have been told about the importance of a multi-disciplinary approach to estate planning. That approach typically involves the financial advisor, attorney and

Before starting to draft any estate-planning documents, consider helping your client and his family draft a vision statement, a mission statement and a family charter.

accountant working together to develop the best plan possible for a client. Although each professional comes from a different perspective and typically has different skillsets and abilities, ultimately each tends to be focused on financial issues and technical solutions. In addition to these professionals, families should strongly consider adding a professional family consultant or coach. A qualified family consultant or coach can help a family identify its values, develop a family motto and mission statement and identify non-financial issues that need to be resolved. Without an independent, trained family consultant or coach to assist, families are left on their own to try to develop a plan and accomplish something that they've likely never done before. Although an estate plan might deal with the management of financial resources, never forget that it will involve not just individuals, but also related family members and those who have long-standing relationships with your client. It can be difficult to step out of roles as parents, children and potentially grandchildren to

Two Types of Planning

Traditional model vs. new model

Traditional Model	New Model
Asset focused	Beneficiary focused
Tool driven	Purpose driven
Generic	Customized
Static	Dynamic

— David R. York & Andrew L. Howell

create the kind of collaborative environment necessary to develop a plan for multigenerational wealth transfer. In addition, mortality isn't an easy topic to address. Not many people are comfortable with the seemingly morbid topic of discussing what happens when mom and dad die. As a result, there may be an underlying uneasiness to the discussion. Again, the use of a family consultant or coach should diminish this discomfort and switch the atmosphere from a discussion of estate planning to a discussion of the positive objective of creating a lasting legacy.

- 2. Break the silence.** Although attorney-client privilege is one of the hallmarks of a client's relationship with his estate planner, that confidentiality and accompanying silence often extends to the beneficiaries and too frequently causes significant problems. Eighty-nine percent of beneficiaries who knew details about their parents' estate planning prior to their parents' deaths report that they were very or extremely satisfied with the process of distribution, versus 65 percent of those who didn't know the plans.⁸ In families that had one or more specific issues that needed to be addressed (for example, second marriage, family business, legacy cabin), 85 percent of families that resolved those issues prior to parents' deaths reported being very or extremely satisfied with their parents' estate planning, while only 37 percent of families with one or more unresolved issues reported that same level of satisfaction.⁹ Not dealing with sticky issues and complexity during life leads to a lack of family cohesion, broken relationships and even litigation. It's critical that families address these issues while parents are still living as opposed to waiting



until after they die. This is another area in which a professional family consultant or coach can provide invaluable assistance.

- 3. Add purpose to the planning.** Perhaps what should be most disheartening among estate planners is the fact that nine out of 10 affluent families surveyed said that their estate plan didn't deal with their goals, wants and objectives.¹⁰ To help address this staggering disconnect, before starting to draft any estate-planning documents, consider helping your client and his family draft a vision statement, a mission statement and a family charter. Creating a vision statement isn't a new concept, although

the term is a more recent concoction. Originally called "mottos," they've been used by families and groups for centuries to inspire, keep focused and bind them together. Whether it's the Rothschild family ("Concordia, Integritas, Industria," translated as "Harmony, Integrity, Industry") or the U.S. Marine Corp ("Semper Fidelis," translated as "Always Faithful"), a vision statement or motto can help to bring purpose and direction. A mission statement, on the other hand, sets out how your client is going to achieve his vision. It's more practical and focused



SPOT LIGHT

Secret Garden

Irises, Anemones, Carnations, Aquilegia and Wild Orchids by Sir Cedric Morris sold for \$73,067 at Sotheby's recent Made in Britain auction in London on April 5, 2017. Morris' enthusiasm for painting flowers no doubtedly "stemmed" from his passion for gardening.

When interviewing a client about his estate-planning objectives, start by getting a flavor for who he is, what he believes and the details of his family.


on what your client does and how he does it. It's the map that leads your client to accomplish his vision. Like a business, a family is a collection of diverse individuals with a common goal or objective. In fact, some families think of themselves collectively as a business, and each member of the family is thought of as an asset of the business. Although the level of volition may not be the same since we're born into our families, both represent a collective of diverse individuals with a common interest. Understanding the shared core values and establishing a vision and mission will not only help to drive the estate plan but also will add to the ability to make a positive multigenerational impact. As a group exercise either initiated by the family or facilitated by a consultant, it can also be a great opportunity to build cohesion and connection. Once vision and mission are complete, the family should also develop a family charter to address issues such as education and development, how conflicts will be resolved and decision-making practices. Finally, the vision statement, mission statement and family charter can be incorporated into a



purpose-of-trust provision that gives guidance and direction to future trustees and beneficiaries.

4. **Ask technicolor questions.** Estate planners use data sheets or other tools to gather information like names, birthdates, fiduciaries and assets. This information is critical to putting together an effective estate plan. Unfortunately, most estate planners ask only these black and white questions, and they fail to gather more valuable information. When interviewing a client about his estate-planning objectives, start by getting a flavor for who he is, what he believes and the details of his family. These questions could include asking the following: Describe your children and their passions, interests, struggles and triumphs. What's your money for? What's one piece of advice that you would like to pass on to your heirs? What's one thing you would leave as a lasting legacy to the next generation? Looking to the future to a family gathering 30 years from now, what would you want it to look like?

Holistic Wealth Transfer

Ideally, an estate planner's goal should be to assist clients beyond merely doing tax planning and help their clients be able to say: "We are the Smiths. This is what we believe in, this is what we value and this is what we do to impact future generations and the world." Holistic wealth transfer and family continuity planning should be the goal of estate planning. The best plan is one that ultimately is less interested helping the next generation become rich and more interested in preparing them to manage, sustain and carry on a rich and cohesive legacy. 

Endnotes

1. www.internetlivestats.com/total-number-of-websites.
2. *Ibid.*
3. We amalgamated survey results from the following sources: "2015 U.S. Trust Insights on Wealth and Worth, Annual Survey of High-Net-Worth and Ultra-High-Net-Worth Americans," www.ustrust.com/publish/content/application/pdf/GWMOL/USTp_AR3FPDKC_2016-05.pdf; "The Allianz American Legacies Pulse Survey" (Jan. 12-19, 2012), www.allianzlife.com/-/media/files/allianz/documents/ent_1371_n.pdf?1a=er; Russ Alan Prince, "Why the Wealthy Do Not Implement Their Estate Plans," *Forbes* (March 22, 2016), <http://bit.ly/2n8a3Ex>; Shelly Schwartz, "Wealthy Parents Fret Over 'Inheritance Talk' With Kids," *CNBC Millionaire Survey* (July 22, 2015), www.cnbc.com/2015/06/29/wealthy-suffer-from-estate-planning-fatigue.html; and UBS Wealth Management Survey, Fall 2014, www.ubs.com/content/dam/WealthManagementAmericas/documents/investor-watch-3Q2014.pdf.

4. *Ibid.*
5. *Ibid.*
6. *Ibid.*
7. Human capital encompasses an individual's history (good and bad), reputation, core values, life lessons, education (both formal and informal) and relationships. It's the collective life experience, as well as how those beliefs and values were formed.
8. *See supra* note 3.
9. *Ibid.*
10. *Ibid.*



SPOT LIGHT

What Are You Looking At?

Woman by John Bellamy sold for \$5,441 at Sotheby's recent Made in Britain auction in London on April 5, 2017. Bellamy's works were sometimes inspired by his own traumatic life events. In 1988, when most thought his death was impending, Bellamy not only survived what was a relatively new liver transplant procedure, but also was able to paint within hours of the operation. He died in 2013.