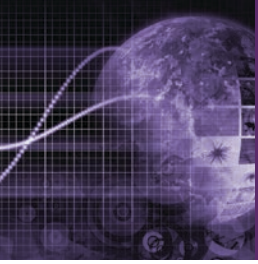

By **Marvin E. Blum** & **Anna K. Selby**

Creating a Family Legacy

Provide guidance for future generations

There's a phenomenon taking shape in the estate-planning world that will likely lead to an entirely new aspect of the modern estate-planning practice: the increasing importance of a family legacy. As more hardworking, largely self-made baby boomers approach retirement, they're beginning to look beyond the wealth they've accumulated and ask: "To what end have I created this? How can I leave a lasting legacy for my family?" Essentially, they've reached a point in which the status of "successful" has become less about finances and more about life.

For many planners, these types of questions are uncharted waters. Indeed, the same toolbox of planning options and sound tax advice that's so useful in crafting an estate plan will do little to help your clients find meaning in the wealth they've worked so hard to create. True, estate planners aren't psychologists, but as people who specialize in counseling others how best to pass down possessions, estate planners should, at the very least, understand the importance of leaving a family legacy and be able to advise clients on these "soft topics."

Estate Planner's Role

First, it's vital to look at the endgame. When helping clients form their family legacies, there won't be a "taxes saved" column on a spreadsheet that can prove you've done your job well. So, what's the goal? How do you know when to check the "legacy completed" box? Fundamentally, the estate planner's role in helping create a family legacy is twofold: (1) help establish goals, and (2) provide counsel for how to achieve those goals.

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Obviously, there's an abstract aspect to this type of planning, but when clients express an interest in finding a way to ensure they've left behind more than a brood of trust fund babies, estate planners should be there to help identify what exactly the clients are looking to achieve and how they should go about achieving it.

Every family is different—different people, different relationships, different amounts of wealth and different circumstances. No two clients will share the same idea of what they want their legacy to be. Consequently, the best place for an estate planner to start is simply to ask the client: "What do you want to leave behind?" When conducting traditional estate planning, the answer to this question comes in the form of a dollar amount or a list of assets, but when helping establish a family legacy, planners must be prepared to find the deeper issues. In our experience, clients who express an interest in creating a family legacy are generally driven by concern and anxiety over whether their family's relationships will disintegrate; whether their family will value money over other more important things; and whether the family wealth will be squandered or put to good use. Accordingly, estate planners should identify goals that will assuage these concerns.

Legacy planning goals can be as broad or as narrow as the client prefers. For instance, one client's goal may be to reconcile with a specific family member, while another's might be to spend more time with family. In the interest of simplicity, we'll look at four broad goals that, in our opinion, are the foundation of a solid family legacy: (1) cultivate a family identity; (2) establish a family mission; (3) emphasize philanthropy and a strong work ethic; and (4) build an estate plan that successfully and efficiently transfers family wealth.

Once the goals are established, how do you help your clients to reach them? Family legacy goals aren't always easy to achieve, and the best way to approach them differs largely from family to family. Estate planners should focus on providing ideas, examples and encouragement. More technical legacy planning goals (such as charitable planning) often require a more hands-on approach from the planner.

Cultivate Family Identity

A family identity can generally be boiled down to the elements of memories, relationships and historical ties. Memories, specifically, can be especially powerful in uniting a family, and sometimes, it's the smallest memories that matter most.

Journalist Eric Spitznagel recently wrote an article for *The New York Times* about his brother, Mark, and the death of their father. Entitled "The Moat, the Millions, and the $50 Timex Watch,"[1] the article discusses Eric's realization that some of his father's most worthless personal effects serve as a powerful reminder of what he and his brother have in common, which besides belonging to the same family, is little else.

Mark is a multimillionaire hedge fund manager who made his fortune betting on stock market volatility. Eric, on the other hand, is a writer whose work has appeared in several publications, including *Rolling Stone, Vanity Fair, Bloomberg Businessweek* and *The New York Times.* When Eric spent a night at his brother's mansion while in Los Angeles for a business trip, the brothers realized that their two separate, seemingly distant universes actually have a very strong connection: memories of their father. Mark noticed Eric was wearing their father's old Timex watch. Even though the watch no longer worked, Mark offered to buy it. When Eric refused, the two wrestled for it, and although Eric ended up keeping the watch, the two continue to argue over who has rightful ownership. Eric describes how the watch squabble actually brought the two brothers closer together as they recalled stories they hadn't thought about in years.

No amount of wealth can replace memories. By binding families together and keeping us connected to the past, memories can make even an old, broken watch irreplaceable. In fact, years ago, we handled a particularly cantankerous probate of a significantly sized estate, in which the main source of contention was who would receive grandfather's fishing pole. It's important, therefore, for clients to evaluate their possessions for the items that will mean the most after they're gone—not only to avoid conflict, but also to provide a way to facilitate a continued connection among family members.

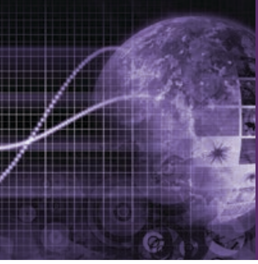
But, memories are only part of an identity. It will be impossible to secure a family identity if the family itself is falling apart. In today's world, there can be many different types of stress on family relationships. Conflicts and busy schedules cause hairline cracks in the foundation of a family that often lead to giant relational chasms once the matriarch and/or patriarch of the family dies. Throw some money or a family business into the mix, and the problem is only exacerbated.

> Emphasize the importance of an annual family retreat.

Family retreat. While conflicts and busy schedules are a normal part of any family, the real problems emerge when there's no positive force pushing the family closer together and acting as a balance against the stress. One way estate planners can help in this regard is to emphasize the importance of an annual family retreat. Escaping out of town and away from daily distractions allows time to strengthen the family bond. Although retreats are typically led by the senior generation, there are trained consultants who can serve as a coach or guide to help the family members make the most of their time together.

In addition to typical vacation-type activities that the family can participate in together, a family retreat allows time for meaningful and informative conversations regarding family affairs that may never be discussed unless specifically scheduled as a retreat activity. Sometimes, there are even important family decisions that need to be made. Ideally, the retreat serves as a combination of fun, education and decisionmaking, all of which help to reinforce the stability and connectedness of the family.

Family traditions. A retreat not only can strengthen



relationships now, but also can establish a family tradition that will help strengthen relationships for years to come. Traditions are one of the best ways to bring a family together, and while the specifics differ wildly depending on the family, typically, the cornier the tradition the better. A friend of mine once told me about her family's Christmas stocking tradition. Every year, they would find fruit and shelled nuts mixed in among their stocking gifts. Her mother—Nana to the grandchildren—had started the tradition because she herself had grown up receiving fruit and nuts in her stocking; some years, that was all Nana's family could afford. One year,

Family traditions, no matter how seemingly insignificant, help solidify family relationships in the future by establishing a recurring reminder of the past.

the grandchildren gathered up all the fruit and nuts to use as weapons in an infamous living room "war" that left the living room and several grandchildren covered in orange pulp. The next Christmas, Nana skipped the fruit and nuts, thinking that it would save a lot of waste (no one ever ate them) and that they wouldn't be missed. But, everyone—including the previously orange pulp covered teenagers—revolted, demanding that fruit and nuts always be placed in their stockings. Nana has since died, but the next generation has continued the tradition. The whole family knows the story behind Nana's stocking treats and looks forward to finding fruit and nuts in their stocking. Oranges, however, are now strictly prohibited.

Traditions don't have to be elaborate or well thought out, either. Take, for example, the tradition described in Bruce Feiler's book, *The Secrets of Happy Families.*[2] Feiler (who isn't Jewish) recalls a night when he joined a colleague for a Shabbat dinner. Feiler describes the colleague standing at the head of the table surrounded by his wife, three children and eight grandchildren. The grandfather gave the go-ahead and pulled out a handful of yarmulkes, flinging them like Frisbees at each of the grandchildren, who bobbed and wove in an attempt to land one on their heads without using their hands. Feiler asked his colleague, "Is this in the Torah?" to which the colleague replied, "No, it's in the Duke Family Hall of Fame, and that's much more important." Family traditions, no matter how seemingly insignificant, help solidify family relationships in the future by establishing a recurring reminder of the past—and the past makes up an important part of a family's identity.

In fact, a family's historical ties can be a rich source for cultivating a family identity, and estate planners should share with clients the importance of passing down their family's history. Interestingly, a strong knowledge of family history has even been linked to a higher self-esteem and better emotional health in children. An article from *The New York Times* entitled "The Stories That Bind Us" asserts that the sharing of family stories is the single most important thing done in a family.[3] According to the article, research shows that children who know their heritage—both the good and the bad—and understand they come from a long line of people who've made it through difficult times, will be more resolute when facing difficulties in their own lives. The more names and hometowns of great-grandparents they know, the higher their self-confidence.

Overall, a family that knows its roots is much more likely to see the value in sticking together in the future, which is vital to keeping a family's identity intact. Estate planners should encourage clients to begin thinking about their family's identity now. Make memories, plan retreats, treasure tradition and ensure younger generations carry on with knowledge of who their ancestors were and what they accomplished.

Establish a Family Mission

Once a client establishes how to leave his family with a sense of identity, the focus should shift to whether the family will be left with a purpose behind which it can unite. When transferring a large amount of wealth to a younger generation, far too many clients either fail to provide any guidance at all or fail to share their guidance until the lawyer is reading the will and mom/dad are gone, leaving no one to explain why things were done the way they were done and what mom or dad wished to have happen next.

Ensuring that the family has a clear understanding of mom's and dad's intentions and vision for the family can be crucial to the family's ability to work together as one unit. Creating a family mission statement can be a particularly impactful tool in this regard. In "The Stories That Bind Us,"[4] it's recommended that families craft a mission statement to "preserve the core"—similar to the way a large company often uses a mission statement to maintain its core values. For example, a mission statement might say: (1) We value relationships; (2) We value productive work; and (3) We value meaning in life, whether drawn from spirituality or some other life-giving focus.

Ethical wills. Another substantial way clients can provide their families with guidance for the future is through the use of an "ethical will." Sometimes also called a "legacy letter," an ethical will is a way to communicate, in one letter, all the things clients would like future generations of their family to know. Dr. Dennis Jaffe is a consultant who works with families to successfully transfer wealth, businesses and family legacies across generations.[5] Currently, he's involved in a project researching "hundred year families" to discover the best practices of successful multi-generational families and how they avoid squandering family wealth and goodwill. The old proverb, "Shirtsleeves to shirtsleeves in three generations" (meaning wealth is dissipated after two generational transfers) doesn't have to apply to everyone, and, according to Jaffe, ethical wills are common among families who've successfully avoided a return to "shirtsleeves."

While there are no rules dictating what an ethical will can include, it should, at the very least, express the client's desire for how the family should function in the future. Typically, this involves laying out the family mission statement, but it can also be helpful to include a list of values with which the family will ideally strive to comply. Some commentators have even suggested including financial information, family health history going back two or three generations and a list of the parents' accomplishments. Other possible topics to include are:

- What the client values most;
- Important events in the client's life;
- A history of the family with names of ancestors;
- The client's best memories and fondest moments;
- The client's values and beliefs; and
- Wisdom learned from life experiences.

Avi Z. Kestenbaum, an estate-planning attorney with Meltzer, Lippe, Goldstein & Breitstone, LLP in New York, is an advocate of ethical wills, which he refers to as "love letters." In a recent interview with Veronica Dagher for *Wall Street Journal Wealth Advisor,* Kestenbaum recommends clients write a group letter to their children telling them how important it is they get along. He also advises clients to write an individual letter to each child, affirming love and explaining, "Hey, this is what I put in my plan. I love my children the same. These were my reasons. I'm not asking you to necessarily agree with me, but understand I did my best. I struggled, and please accept what I've done."

An ethical will isn't something that should be locked away in a desk drawer. It should be read to the whole family and used to fuel discussion. In fact, a reading of the ethical will is a great activity to schedule on a family retreat. It may not be the most comfortable of conversations, but it's a great way to ensure everyone is on the same page, which can be especially important if there's a family business at stake.

In a speech Jaffe gave discussing his progress on the hundred year family research, he mentioned a letter written by the matriarch of a wealthy family that operated a successful business. At a family gathering, the matriarch's letter was read to the second and third generations of the family. The matriarch imparted wisdom and advice but made a point to be very direct about her desires for the future of the business, stating, "I would rather you dismantle the family business than squabble over it." Sometimes, it's strong words like these that can make all the difference for a family. The matriarch provided an invaluable lesson: Money and a successful business mean nothing if everyone hates each other. This is the type of message that must be intentionally delivered to future generations of a family, whether via a mission statement or included in an ethical will. People will naturally fight for what they think is important, and clients should make sure what's important to their family is family—and not just money.

Philanthropy/Strong Work Ethic

It's easy for children who grow up in wealthy families never to learn the value of a dollar, and estate planners should encourage clients to instill in their families a healthy attitude toward wealth. One way to do this is to help younger generations develop a love for philanthropy and an appreciation for hard work. In addition to the obvious benefit of helping others, philanthropy can be a useful tool in shielding younger generations from the negative effects that a large inheritance may have on children, serving as a much needed counterweight in the quest to find the perfect balance between providing for children and spoiling them.

Statistics show that the use of family philanthropy as a teaching tool is a determining factor in whether a family remains united.

Charitable giving shows younger generations the value of helping others and, if done correctly, plays an important role in preparing them to manage their future inheritance. In fact, statistics show that the use of family philanthropy as a teaching tool is a determining factor in whether a family remains united.[6] A family foundation or donor advised fund (DAF) can serve as a training ground for younger generations to learn how to handle money, give to others and collaborate with family members. For example, clients can establish a family foundation and form several groups of family members that will each be responsible for determining how a set amount (say $3,000) will be donated each year. Those in each group can gather and make presentations on those charities most meaningful to them. The group can then collaborate to choose the best way to allocate their money among the different charities for that year. All ages can participate, and it can be a perfect activity for a family retreat or vacation.

A DAF (a private fund held within charity) is a simpler vehicle for family philanthropy. In 2012, there were more than 200,000 DAFs, representing more than $45 billion in managed assets.[7] While the charity performs all administrative requirements, the donor retains the ability to make recommendations on how and to whom the money is distributed. Allowing the younger generations of a family to take on responsibility in making decisions for the DAF exposes them to the positive impact money can have on a community and shifts their focus to what money can accomplish, instead of what money can buy. Regardless of the chosen vehicle, intentionally using philanthropy to educate and influence the next generation can make a huge impact on the long-term success of the family.

Inheritance Amount

One of the most common questions estate planners face from clients is, "How much should I leave my children?" There's a natural desire for parents to want to provide for their kids and grandkids, but more families are becoming concerned with the negative effects of passing down large amounts of wealth—with good reason. A large inheritance often acts as a disincentive to achievement. When there's no pressure to succeed in their own right, many heirs fail to pursue meaningful careers. Work helps promote self-respect, and those who don't have to work can miss out on the sense of self-worth that's gained through finding and striving to excel in a vocation. Heirs who've never worked are often burdened by a lack of fulfillment.[8] Moreover, children separate from their parents by going out into the world and making their own way, and not having to work (or not having to strive to be successful at work) perpetuates an emotional dependency. Here's how some prominent families have handled the issue of inheritance amounts.

Gloria Vanderbilt. Gloria is notable as an early developer of designer blue jeans, but she grew up in a family known for its prominence in the shipping and railroad industries. Her great-great-grandfather, Cornelius Vanderbilt, was a well-known shipping and railroad magnate. Cornelius started with one ship and grew his business to become one of the wealthiest men in the world during the 19th century.[9]

When Gloria reached the age of 21, she gained control of her inheritance—almost $5 million—which was a tremendous amount of money in 1945.[10] Although she certainly had the financial security to be able not to work, Gloria earned a reputation as a workhorse. When asked about working despite not needing the income, Gloria replied, "I had to make something of myself."[11] She's continuously increased her wealth over the years and, at age 90, is reportedly worth $200 million today.

Gloria has four sons, the youngest of whom is Anderson Cooper of CNN fame. Gloria has made it clear to her sons that there will be no inheritance. Anderson Cooper has been quoted agreeing with his mother's decision, stating, "I don't believe in inheriting money. I think it's an initiative sucker . . . From the time I was growing up, if I felt that there was some pot of gold waiting for me, I don't know that I would've been so motivated."[12] Unsurprisingly, successful people often cite a strong work ethic as an invaluable attribute.

Stephen Hawking. When Diane Sawyer interviewed him in 2010, he shared excellent advice regarding the work ethic that he's passed on to his children. Stephen is known as one of the world's most renowned physicists, but he's just as notable for his high-tech wheelchair. He's almost entirely paralyzed by ALS and no longer has the ability to speak. He controls his wheelchair by blinking and moving his right cheek. Facing insurmountable obstacles on a daily basis, he tells his children to "never give up work . . . work gives you meaning and purpose, and life is empty without it."[13] The significance of this advice is displayed clearly in the unfortunate disaster unfolding within one prominent American family—the Rollins.

Wayne Rollins. Most people don't know the Rollins family by name, but the Rollins' family business—Orkin pest control—has been ridding American homes of insects and vermin for decades.[14] Wayne Rollins purchased the company in the 1960s and, with the help of his two sons, Gary and Randall, successfully grew the business into what's now a pest-killing empire. Wayne has since died, but Gary (CEO) and Randall (company chairman) are worth about $2.3 billion each. But, this American dream has regressed rapidly into a nightmare.

Fights over money are destroying the family. Wayne established trusts for his nine grandchildren (Gary's and Randall's kids) prior to his death, and in 2000, Gary and Randall established eligibility requirements for trust distributions, mandating that the grandchildren be engaged in "meaningful pursuits" to receive a distribution from the trust. This wasn't a particularly high threshold—it didn't mean full time employment, but simply a lack of idleness. The grandchildren had already received several million dollars (some from a distribution in 2000 of $1 million and some from a distribution on reaching age 21), but the meaningful pursuits requirement proved a high bar to reach for many of them. Although they inherited their parents' love of finer things, their dedication to work appears to be lacking. A lawsuit over the trust distributions is set to go to court this year, and it has torn the family apart.

The Rollins family represents the worst of what money can do to a family, but in varying degrees, the Rollins' scenario has been played out in families across the country. In response, some wealthy individuals, like Gloria Vanderbilt, decide to withhold an inheritance altogether. Others are looking for a middle ground. But, the line between taking care of children and crippling them is elusive and will vary from family to family. Furthermore, there's no magic dollar value at which a child becomes spoiled. There are instead a myriad of factors that play into the well-being and maturity of a child.

Warren Buffett. He's been quoted as saying that he wanted to give his kids just enough so that they would feel that they could do anything, but not so much that they would feel like doing nothing.[15] Warren is giving away his fortune bit by bit each year. Since 2006, he's given away $2.8 billion worth of Berkshire Hathaway stock. In 2013, I had the opportunity to attend the Berkshire Hathaway annual meeting in Omaha and was able to ask him to expand on how people can avoid ruining their kids with wealth. He responded:

> I think that more of our kids are ruined by the behavior of their parents than by the amount of the inheritance. Your children are learning about the world through you and more through your actions than they are through your words . . . I don't actually think that the amount of money that a rich person leaves to their children is the determining factor at all. In terms of how children turn out, I think that the atmosphere and what they see about them and how their parents behave are more important.

This statement embodies why philanthropy, a strong work ethic and legacy planning, generally, are so important to the long-term health of a family. If clients desire for their families to behave a certain way in the future, they need to be actively engaged in shaping that behavior now.

Bill and Melinda Gates. They've demonstrated, on a grand scale, the importance of charitable giving, and in so doing, have left an incredible legacy for their family. Choosing not to pass the bulk of their $76 billion fortune to their children, Bill and Melinda partnered with Warren Buffett in 2010 to create The Giving Pledge, which is a philanthropic initiative aimed at billionaires.

> For clients seeking to leave behind more than a bank account, emphasizing the importance of philanthropy and hard work to younger generations can reap great rewards.

The Giving Pledge is "an effort to help address society's most pressing problems by inviting the world's wealthiest individuals and families to commit to giving more than half of their wealth to philanthropy or charitable causes either during their lifetime or in their Will."[16] To join The Giving Pledge, an individual or family makes a public statement declaring their decision to join the pledge. It's not a legal, binding contract but rather a moral commitment to give.

To date, over 120 billionaires have joined The Giving Pledge, including Diane Von Furstenberg, Michael Bloomberg, Ted Turner and Richard and Joan Branson. When the Bransons made their pledge, they said, "'Stuff' really is not what brings happiness.[17] Family, friends, good health and the satisfaction that comes from making a positive difference are what really matters. Happily, our children, who will be our principal heirs, agree with me on this."[18]

These families' dedication to philanthropy has undoubtedly touched countless lives, but their actions have also modeled charitable giving to their children, weaving compassion for others into the family identity and leaving weighty footsteps in which future generations can follow. For clients seeking to leave behind more than a bank account, emphasizing the importance of philanthropy and hard work to younger generations can reap great rewards— widening their worldview, increasing their appreciation for money and likely uniting the family in the process.

Optimal Estate Plan Menu

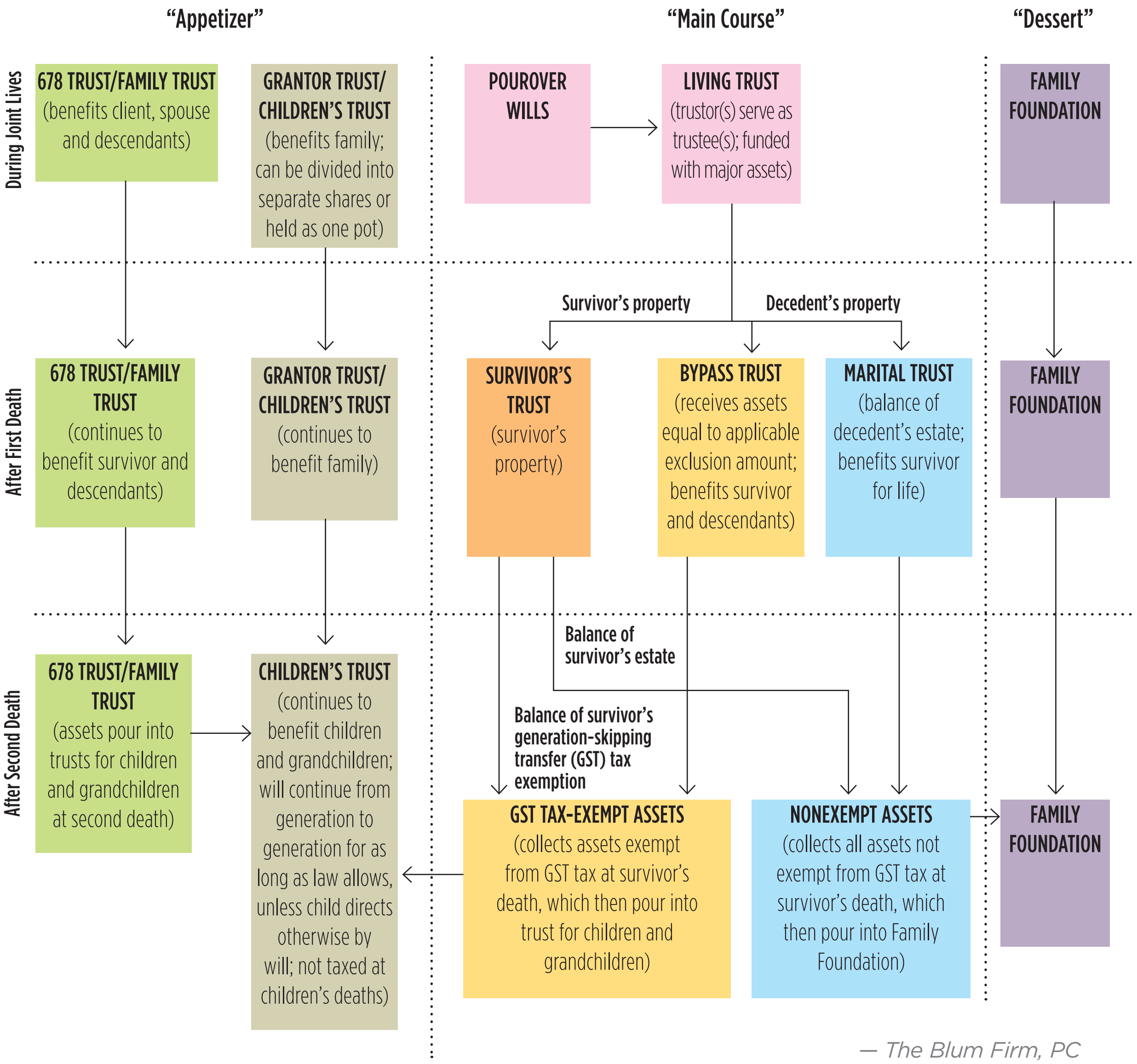
Carefully crafting and working toward establishing a family legacy will be much more difficult if there isn't a clear estate plan in place to effectively transfer wealth to the next generation. In this regard, estate planners must ensure that the technical aspects of a client's estate plan support the continuation of a family legacy. Avoiding family conflict is difficult enough without the added strain of an estate plan that's a mess.

While there are a number of ways to minimize estate taxes to ease the burden on future generations, when deciding which type of planning options to use, both the client's personal and tax objectives must be weighed and evaluated to ultimately achieve the client's "optimal plan." At The Blum Firm, we think of the optimal estate plan as a menu. (See "Optimal Estate Plan," p. 27.) The client's foundational estate-planning documents (such as a will and living trust) make up the "main course" that directs how the client's assets will be disposed of at death. Although everyone typically orders a main course, we also encourage clients to order what we refer to as the "appetizer," which is comprised of planning techniques that can be performed during life. These techniques serve to shift assets out of a client's estate for estate tax purposes. Finally, once clients have pre-funded their children's inheritances and secured what will be passed down to their family, we encourage clients to consider the "dessert," which represents those planning options that can allow them to avoid estate tax completely, often by leaving assets to a family foundation or other charitable vehicle.

When incorporating philanthropy into an estate plan, it's vital that estate planners create efficient ways for their clients to conduct charitable giving. Typical

Optimal Estate Plan

Weigh the client's personal and tax objectives



— The Blum Firm, PC

charitably focused estate plans involve setting aside a portion of the estate for the client's descendants and leaving the remainder to a charity. Pre-funding the children's inheritance into trusts during the client's life allows the client to leave assets remaining at death directly to a charity, which eliminates estate taxes and prevents the Internal Revenue Service from becoming an unwanted "heir" of the estate.

One charitable planning tool that embraces this concept is the charitable lead annuity trust (CLAT), which is commonly referred to as a "Jackie O. Trust" due to Jacqueline Kennedy Onassis' use of it in her will. Jackie's will provided that her residuary estate would be used to fund a CLAT that would make annual payments equal to 8 percent of the initial value of the CLAT to a charity for 24 years.[19] At the end of 24 years, the remaining trust assets would pass to Jackie's grandchildren.

With careful planning, a CLAT can be structured so there's no estate or gift tax on the portion of the assets passing to the heirs at the donor's death. Because CLATs help save estate tax and pass wealth to future generations while benefitting charitable organizations at the same time, they're a great option for families looking to make an impact with their estate plan. Indeed, the wealthiest family in America has put them to very good use.

The Walton family, heirs of brothers Sam and Bud Walton who founded the massive Walmart chain, have used CLATs with tremendous success. It's often said that the estate tax is a "voluntary tax" because there are ways to reduce the tax to zero, regardless of the size of the estate. The Walton family is collectively worth $152 billion, which is over $63 billion more than the next richest family, the Koch brothers.[20] Despite the enormity of their wealth, through careful planning, the Walton family has managed to successfully pass down their wealth from generation to generation without paying estate tax.

The Walton family has created at least 21 CLATs to help transfer wealth.[21] All of them benefit the same charity—the Walton Family Foundation. Helen Walton, who died in 2007, was an advocate for donating to charitable organizations, reportedly stating, "It's not what you gather, but what you scatter that tells what kind of life you have lived."[22] These trusts have provided all but 1.2 percent of the funding for the Walton Family Foundation, which gave away $325 million in 2013 and has given away a total of $5 billion since its creation in 1988.

Unlike traditional areas of estate planning, creating a family legacy involves a more abstract line of thinking, but estate planners shouldn't shy away from playing a role in the process. When clients share their concerns over the future well-being of their family and the effect that a large inheritance will have on their children, the estate planner should be there to identify goals for building a strong family legacy and to explore possible ways to achieve those goals. Estate planners are tasked with transferring a client's wealth from generation to generation, and tangled up in that task is the responsibility of ensuring that wealth is transferred in a way that provides the greatest benefit to the family, both from a financial perspective and a relational perspective.

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