How to Not Ruin Your Clients' Kids with Money
The Advisor's Role in Financial and Personal Outcomes

Milwaukee Estate Planning Forum
December 3, 2025

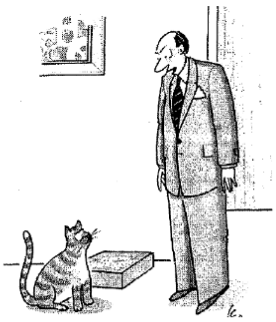
by Mark A. Shiller
Certus Legal Group, Ltd.
10700 W. Research Dr., Suite 165
Milwaukee, WI 53226
(414) – 939-8370
mshiller@certuslegalgroup.com

I. Impact of the Advisory Environment and Alignment with Client Concerns

The subject of *How to Not Ruin Your Kids with Money* is of primary interest to our clients. And, it seems clear that the subject matter is of high interest and concern to people of a wide range of wealth levels – although certainly a heightened interest and concern rising (on average) with higher wealth amounts. So how do we advisors engage in these matters responsibly and effectively when these topics are raised by clients? Let's start by understanding the challenges advisors face in this space.

A. Typical Focus of Financial Advisors

The majority of focus in the financial services industry broadly is focused on addressing the planning for discrete individual and married couple clients. Yet these individuals and couples are placed squarely within family and other interpersonal systems – and upon satisfactory accomplishment of their specific personal and financial goals, goals within those systems become more primary.



"Never, ever, think outside the box."

1. Industry focus leads to patterns, tools, and conditioning of client expectations that are more "single generation" than "multi-generation."

2. There are efficiencies that go along with that focus that can lead to enhanced client outcomes associated with those focuses and cost efficiencies. This is sensible and mostly beneficial, but probably

also leads to an increased single generation focus for the advisor, too. In that sense, the multi-generational goals are a bit harder to bridge into.

3. By over-focusing on the client across the table, the person impacted a generation or two or three out is necessarily impacted. Especially when one considers the flow of the financial, personal and familial circumstances the client's beneficiaries will experience in the years that follow leaving the table.

B. Compensation Models for Financial Services Professionals

One of the challenges associated with serving clients well is the fact that most advisors are compensated for helpful and meaningful, but secondary level, goals – presuming that personal financial security and experience has been addressed.

C. Skills Required for Engaging in Multi-Generational Planning

Advisors will have their strengths and areas of emphasis, but also points of weakness and blind spots. When addressing multi-generational goals, advisors will naturally find themselves moving into conversations of the intersection of wealth transfers and family/personal dynamics – but may not realize what they are unaware of regarding the personal or technical issues that might come into play in certain contexts.

D. Advisor Interest in Engaging in the Subject

In the author's experience, there is a significant variability that advisors have on their interest in the "soft and squishy stuff" – which may color the experience of the client when such matters arise. Further, expanding the conversation from the individual and couple as the focus to the family as a focus necessarily creates additional layers of complexity in and of itself – let alone when factoring in additional complexity when higher levels of wealth are present. This increased complexity, if unfamiliar or uncomfortable to the advisor can lead to avoidance behaviors regarding the subject from the advisor and general dismissiveness of client concerns.

E. Advisor and Client Time Limitations

Perhaps complicated by the compensation structures in some (all?) disciplines, we have to acknowledge the impact of time available. The financial services industry is mostly under-human-ed, with not a great deal of relief likely to come any time soon. As an industry we are stretched thin – and therefore engaging in something as time consuming as addressing this type of topic is a significant barrier to engaging in it at all.

II. Planning Structures to Achieve (or Not Achieve) Primary Goals

The bulk of trust planning done by estate planning attorneys has been focused on individual beneficiaries and their family lines. Our trust law has also had a similar focus. So too have ways of servicing clients in a variety financial services contexts. These traditional structures tend to sag under the weight of collective goals and interests, but they also have implications for the individual beneficiary experience. While the advisor's impact on the personal results achieved within client families should not be overstated, it should also not be ignored. So let's consider the potential implications of the garden variety structures we all use and see and a few more exotic options.

A. Distribution Standards in Traditional Trusts

It is certainly a topic that every estate planner considers, but how often distribution standards are examined in the structures we prepare – both with clients and independent of them – can vary significantly. I invite reflection of the standards we typically use and why, as well as a consideration of when we vary from our typical approach.

1. Income and Principal

Practitioners may choose to have a single standard apply to the entirety of a trust. Perhaps this is most common in fully discretionary or traditional HEMS type trusts, but it is also quite common to break out standards of income and principal not uncommon to see different standards for each category.

a. Mandatory Income

When there is an estate planning objective that requires a qualified terminable interest property structure, mandatory income is, of course, going to be part of the trust's design. Consider, however, the rationale of using mandatory income standards when such, or similar, considerations are not present.

b. Unitrust and Annuity Structures

Apart from techniques that require them (Charitable Remainder Trusts, Grantor Retained Annuity Trusts, etc.), what leads one to utilize unitrust or annuity/fixed payment amount structures?

i. When Wisconsin adopted an earlier version of the Uniform Principal and Income Act (1997) in 2005, one item that got a fair amount of attention was the ability to convert a trust to a unitrust. That ability is retained in Wis. Stat. §701.1106. The expectation was that this facility would be frequently utilized as a means to balance the interests of current and remainder beneficiaries. In the author's opinion, that has not played out over time.

ii. Fixed amounts, or amounts indexed for inflation, or similar structures are also not particularly common. Where they appear is more in the second marriage type situation or when a beneficiary has some perceived deficiency. Do you agree?

c. Undistributed Income

If income distributions are discretionary, how should undistributed income be addressed? While some documents will say that any undistributed income is to be added to principal (perhaps annually?), other trust documents are silent

on the topic. Might this suggest that the undistributed income amount is subject to later distribution if no direction is given? Or should the opposite presumption hold?

2. Types of Standards

a. Trust Accounting Income

Trust Accounting Income is its own area of study and consideration, but it is easily and casually pulled into our trusts with a simple reference to "income."

b. Ascertainable Standards

The idea of an ascertainable standard is fairly theoretical in nature. There are lots of shades of grey even with the most commonly used standards. The Wisconsin Trust Code's definition of an "ascertainable standard" is in accord with the Uniform Trust Code and provides that an "'[a]scertainable standard' means a standard relating to an individual's health, education, support, or maintenance within the meaning of section 2041 (b) (1) (A) or 2514 (c) (1) of the Internal Revenue Code." Wis. Stat. §701.0103(2). With that as background, consider the following:

i. Health

Distributions for a beneficiary's health would often seem simple enough. Perhaps it could be viewed as being limited to the beneficiary's unreimbursed medical expenses. But how does one factor in elective procedures? What should be done with alternative treatments or expenses that impact health? When does mental health require de-toxing in Fiji?

The Restatement (Third) of Trusts states that "health" includes emergency medical treatment, psychiatric and psychological treatment, routine health care examinations, dental and eye care, cosmetic surgery, Lasik surgery, health, dental, or vision insurance, unconventional medical treatment, home health care, gym memberships, spa memberships, golf club memberships, and extended vacations to relieve tension and stress.

ii. Education

Personally, I do not see many beneficiaries embarking on twelve year excursions to obtain a bachelor's degree – but there is always the perpetual student concept that comes to mind. But maybe a better question is what should be appropriate education on a life-long basis and are our trusts supporting those activities enough?

iii. Maintenance and Support

These two standards are generally paired. Should they be? Regardless, this seems to be the broadest set of the most common standards for achieving an ascertainable standard structure. These standards, though, do have an impact and so too can their disparate evaluations depending on the party doing the evaluation's position in the trust.

The Third Restatement includes in its interpretation of "support and maintenance" the following:

> Support of the beneficiary and members of the household, as well as the costs of a suitable education for the beneficiary's children.
>
> Reasonable amounts for the support of a current spouse and minor children that reside elsewhere, but whom the beneficiary either chooses to support or is required to support.
>
> Other items include regular mortgage payments, property taxes, suitable health insurance, maintaining existing life and property insurance, continuation of accustomed patterns of vacation, and charitable and family giving.

iv. Accustomed Standard of Living

Although perhaps not as common, a beneficiary's standard of living is not infrequently implicated in trust documents. But what is often missing with such standards is establishing the baseline for determining that standard. Consider a Colorado case, *Reece Trust*

v. Reece, 2023 WL 6300306 (Colo. Ct. App.), that reviewed how to measure a beneficiary's "accustomed standard of living" for purposes of determining trust distributions and what time to do so. Is it to be measured at the time of the drafting of the trust provision? The time that the trust became irrevocable? Is it variable over time? Something else?

According to the Court, absent directive language in the trust instrument, the preference is to look to the date the trust became irrevocable – a position the Court determined reflected in Comment d(2) to Restatement (Third) of Trusts §50 which states that a beneficiary's accustomed manner of living "is ordinarily that enjoyed by the beneficiary at the time of the settlor's death or at the time an irrevocable trust is created." In this case, the trust was a revocable trust that became effective at the time that the husband/settlor died after an approximately one-year separation between the decedent husband and the wife/beneficiary.

The Comment goes on to say that the amount of distributions under an accustomed manner of living standard can be adjusted for inflation, the beneficiary's deteriorating health, increased financial burden due to the beneficiary's dependents or, in some instances, to maintain the beneficiary at a higher standard of living to which the beneficiary has become accustomed.

v. <u>Permissive Ascertainable Standards</u>

It is not uncommon to see somewhat hybridized standards that reference or contemplate ascertainable standards. These might be referred to as "permissive ascertainable standards" as opposed to "mandatory ascertainable standards." In such constructs, the drafter may intend that the standards create a "ceiling" for how much latitude the trustee would have to make distributions without removing the discretion to make no distributions at all.

This can be important in a standard trust circumstance, but can also be particularly important in the context of a special needs trust. For example, in *Kryzsko v*

Ramsey County Social Services, 607 N.W.2d 237 (N.D. 2000), the trustee was given "sole discretion" to make distributions of trust principal for the beneficiary's "proper care, maintenance, support, and education." The North Dakota Court held that this language created a "support trust" as opposed to a "discretionary trust" – and therefore exposed the trust to payment or reimbursement of the disabled beneficiary's health care costs. The applicable language is quite interesting:

> (a) Introduction. It is the Grantor's primary concern in creating this Trust that it continue in existence as a supplemental fund to public assistance for her handicapped child, Herman Hecker, hereinafter referred to as the `beneficiary', throughout his life as she would provide if she were personally present. . . .
>
> (b) Special Needs. The Trustee shall pay to or apply to the benefit of the beneficiary, for his lifetime, such amounts from the principal or income, up to the whole thereof, as the Trustee in the Trustee's sole discretion may from time to time deem necessary or advisable for the satisfaction of the beneficiary's special needs. Any income not distributed shall be added to principal. As used in this instrument, `special needs' refers to the requisites for maintaining the beneficiary's good health, safety, and welfare when, in the sole discretion of the Trustee, such requisites are not deemed provided by any public agency, office, or department of the State of North Dakota, or of any other state, or of the United States. `Special needs' include, but are not limited to, medical and dental expenses, clothing and equipment, programs of training, education, treatment, and essential dietary needs to the extent that such needs are not provided by any government entity.
> Id. at 228.

In *First of America Trust Company v. United States*, 93-2 USTC Para. 50,507 (D.C.C.D. Ill. 1993), the Court dealt with somewhat similar language:

> [T]he Trustee shall pay or apply the net income and so much of the principal as the Trustee may in its sole discretion deem necessary or appropriate for the support, comfort and welfare of such of [the beneficiaries] as shall be living from time to time.

Unlike the Court in *Kryzko*, the *First of America Trust Company* Court held that the above language created a support trust as to the income (all income of the trust being interpreted to be required to be distributed for the support of the beneficiaries) but a discretionary trust as to principal distributions.

Other courts have indicated that such hybridized terminology might be inherently ambiguous so as to permit the resolution of the grantor's intent through parol evidence. See, e.g., Bohac v. Graham, 424 N.W.2d at 144 (N.D. 1988).

c. <u>Expanded/Unascertainable Standards</u>

Trust documents also reflect preferences or direction to make distributions for "non-ascertainable" purposes as well. The law may put some phrases on the other side of the ascertainable line – comfort, particularly comfort that is not limited to reasonableness, being an example. *See, e.g., Lehman v. United States*, 448 F.2d 1318 (5th Cir. 1971) where the court found that the term "comfort" resulted in the wife/trustee possessing an "unrestricted and discretionary right to consume all of the trust's property, governed only by her own personal assessment what she might need or want. But others are more tied to incentives – assistance with the purchase of a reasonable home, establishing or expanding a prudent business, and the like. These carry certain risks when there is a beneficiary acting as a trustee, but otherwise can provide significant guidance to trustees and beneficiaries alike.

Certain terms are generally understood to be sufficiently indefinite that they would not be considered an ascertainable distribution standard. In addition to the term, "comfort," other terms like "happiness," "benefit," and "welfare," would very likely be considered to be unascertainable standards.

See, Treas. Reg. §20.2041-1(c)(2) ("A power to use property for the comfort, welfare, or happiness of the holder of the power is not limited by the requisite standard."); *See, also,* Treas. Reg. §1.674(b)-1(b)(5)(i) (a power to distribute corpus for pleasure, desire, or happiness of beneficiary is not limited by a reasonably definite standard).

d. Full Discretion

Fully discretionary trusts are trusts in which distributions to beneficiaries are left solely within the discretion of a trustee – usually without regard to an ascertainable or a definite standard. That said, many practitioners rely on permissive language when language implicating a standard is present. For example, a trust instrument may say that "the trustee may (as opposed to shall or must) distribute trust income and principal to a beneficiary for his or her health, education, maintenance, and support." Leaving to the side whether this structure impacts achievement, this structure often is designed to avoid creating an enforceable right in a beneficiary to receive anything from the trust. *See, e.g.,* Restatement (Second) of Trusts §187 ("[w]here discretion is conferred upon the Trustee with respect to the exercise of a power, its exercise is not subject to control by the court, except to prevent an abuse by the Trustee of his discretion.").

In this sense, neither a beneficiary nor a court could compel a trustee to distribute trust funds absent a showing of bad faith, improper motive or other similar concerns regarding the trustee's behavior or some other significant breach of the trustee's fiduciary duties. *See, e.g., Ridgell v. Ridgell*, 960 S.W.2d 144 (Tex. App. 1997); *State Street Bank and Trust Company v. Reiser*, 389 N.E.2d 768 (Mass. 1979); *Brent v. State of Maryland Central Collection Unit*, 537 A.2d 227 (Md. 1988).

e. Emergency Distributions

Many trusts will provide for exceptional distributions to be made for "emergency" situations or other extraordinary circumstances. This type of language is considered by the Restatement (Third) of Trusts as restrictive terminology, along with terms like "severe hardship" or "special need." *See,* Restatement (Third) of Trusts §50, comment d(4). *See, also, e.g.*, *Nardi v. United States*, 385 F.2d 343 (7th Cir. 1967); Budd v. Commissioner, 49 T.C. 468 (1968). While the

predominance of the caselaw would seem to follow suit, the IRS has taken a contrary position in federal estate and gift tax purposes and might eliminate ascertainable standard treatment.

f. Withdrawal Rights

Withdrawal rights are not so much a standard as a right in a beneficiary. However, the structure of the withdrawal right can create certain implementation challenges if not drafted properly.

g. Incentive Trusts

Consider the implications of certain incentive trust structures on the above. For instance, if a trust is designed to say that a beneficiary shall receive distributions equal to their earned income in a particular year, does that imply an ascertainable or unascertainable standard? If the beneficiary is also the trustee (which would seem exceedingly rare in incentive trust contexts), would the beneficiary's ability to choose whether to work or not – or how much or for how much – impact the answer?

h. The Background Music

Perhaps I harp on this too much, but I think it is very important to think about the implications of our Wisconsin Trust Code ("WTC") definition of the "terms of the trust." The WTC provides that the "'[t]erms of a trust' means the manifestation of the settlor's intent regarding a trust's provisions as expressed in the trust instrument, as may be established by other evidence that would be admissible in a judicial proceeding, or as may be established by court order or nonjudicial settlement agreement." Wis. Stat. §701.0103(27) (emphasis added). In other words, the trust instrument is more than just what can be read within the four corners of the trust document. *See, also,* Wis. Stat. §701.0103(30).

What weight to give the settlor's preferences is its own challenge, though. When does the outside information become determinative and when is it simply precatory? What impact does the format of the communication (oral, informal written, formal written, "vibes," etc.) have on the ultimate trustee action and beneficiary rights? What do you do with

settlor preferences or intentions that become "outdated" by some standards?

3. Non-Distributions

In addition to distributions, trusts can and generally do provide flexibility to allow beneficiary use of assets or for the ability to make loans. These approaches have a number of advantages and also do not typically have income tax consequences for a beneficiary who, for instance, makes use of a property held within the trust on a rent-free basis. However, these structures might also require consideration of overriding a duty to diversify or other fiduciary limiters.

a. Are Expenditures on Assets Distributions?

Some practitioners might take the position that an expenditure of a trust that provides a benefit to a beneficiary is a distribution. This raises a question as to whether the beneficiary must be identifiable or his or her interest quantifiable.

b. Beneficiary Well-Being Trusts

Delaware recently enacted a statute that permits trust expenditures for the "well-being" of a trust's beneficiaries. This statute, reproduced below, has raised the question of whether such expenditures would be considered distributive. With no caselaw yet on the statute, what say you?

Del. Code tit. 12 § 3345 - Beneficiary well-being trust

(a) This section applies to any trust the governing instrument of which makes express reference to this section and states that this section, or any part of this section, shall apply. A trust that makes such a reference to this section is known as a "Beneficiary Well-Being Trust" and is deemed to include the powers, duties, rights, and interests of the beneficiaries, trustees, and advisers, within the meaning of "advisers" under § 3313 of this title, as provided in this section.

(b) As used in this section, "beneficiary well-being programs" means seminars, courses, programs, workshops, counselors, personal

coaches, short-term university programs, group or one-on-one meetings, counseling, family meetings, family retreats, family reunions, and custom programs, all of which having one or more of the following purposes:

(1) Preparing each generation of beneficiaries for inheriting wealth by providing the beneficiaries individually or as a group with multi-generational estate and asset planning, assistance with navigating inter-generational asset transfers, developing wealth management and money skills, financial literacy and acumen, business fundamentals, entrepreneurship, knowledge of family businesses, and philanthropy.

(2) Educating beneficiaries about the beneficiaries' family history, the family's values, family governance, family dynamics, family mental health and well-being, and connection among family members.

(c) The trustees and advisers of a Beneficiary Well-Being Trust shall provide the beneficiaries individually or as a group with beneficiary well-being programs at such times and in such manner as set forth in the provisions of the governing instrument, or in the absence of such provisions, then at such times and in such manner as the trustee may determine is appropriate, in accordance with § 3315 of this title.

(d) Subject to the fiduciary duties and authority of the trustees and advisers under the governing instrument and applicable law, the trustees and advisers of a Beneficiary Well-Being Trust shall pay from the trust the costs and expenses of beneficiary well-being programs.

(1) The payments under this subsection are an expense of administration of the trust to the extent permitted by law.

(2) A trustee itself may provide beneficiary well-being programs, and may select, hire, retain, and pay providers of beneficiary well-being programs whether or not the providers are third parties or affiliates of the trustee within the meaning of § 3312 of this Title.

(3) Each provider of beneficiary well-being programs is entitled to payment for providing a beneficiary well-being program, and a trustee is entitled to the full fiduciary compensation to which the trustee is otherwise entitled as trustee without diminution for the fees and costs of the beneficiary well-being program, without prior notice or disclosure to any beneficiary of the trust.

(e) To effectuate this section, the governing instrument may provide for additional powers, duties, rights, and interests that may expand the purpose or scope of a beneficiary well-being program.

Added by Laws 2023, ch. 391,s 7, eff. 8/29/2024.

4. <u>Consideration of Beneficiary Resources</u>

Increasingly, trust instruments are speaking to whether distribution determinations are to be made after accounting for a beneficiary's other resources. But the how to take such assets into account, or what impact trustee behavior on such matters might have on such decisions is unclear. Think too about the implications of what information the "trustee must consider" and what is optional. And also what impact information exchanges or requests have on the parties involved?

Note that the Restatement (Third) of Trusts suggests that a beneficiary's other resources should be considered absent a direction not to. Comment e to Section 50 of the Restatement provides that:

> the presumption is that the trustee is to take the beneficiary's other resources into account in determining whether and in what amounts distributions are to be made, except insofar as, in the trustee's judgment, the settlor's intended treatment of the beneficiary or the purposes of the trust will in some respect be better accomplished by not doing so.

See, also, President, Directors, Etc. v. Delaware Trust Co., 95 A.2d 45 (Del. Ch. 1953), and *Arcaro v. Girard Bank*, WL 21873 (Del. Ch., Dec. 12, 1984).

5. <u>Exclusions</u>

It is my impression that there is a growing use of negative standards or exclusionary language in the estate planning bar. Trusts are more often providing that trustees can or must withhold distributions from, or eliminate eligibility in full for, beneficiaries who have a drug or alcohol addiction, fail to have appropriate employment, display poor financial management, fail to comport themselves appropriately, and the like.

One such trust recently came to light in the case involving the murder of United Healthcare CEO, Brian Thompson, on December 4, 2024. The grandmother of Luigi Mangione, the suspect charged in the murder, reportedly left a significant sum (estimated to be approximately $30 Million) to her children and grandchildren — as long as the descendant has not "been charged, indicted, convicted of or pleads guilty to a felony." The trust goes on to say:

> It is my precatory desire that the Trustees particularly consider invoking their discretion to implement this Section if the felony is a common law felony, a statutory felony if it is the codification of a common law felony, a heinous felony, any felony involving a physically violent act against another person or property or any drug related felony involving distribution or intent to distribute any type of drug or illegal substance . . .. The decision of the Trustees is conclusive, final and binding on everyone. It is my precatory wish that the benefit of the doubt is not given to the individual.

B. Impact of Different Structures of Trusts

1. Pot Trusts

Just as in our kitchens, pot trusts can be big pots or little pots. They have in common the ability to make distributions among a group of beneficiaries and not just a single individual. A pot trust can be problematic compared to a trust that divides for individuals on a by right of representation/*per stirpes* basis given the additional need to consider a variety of beneficiary interests. Further, over time, the population of a full family type pot trust can grow significantly and so too, then, the complexity of balancing interests. These are solvable problems – most of the time, anyway.

a. Primary Beneficiary and Descendants

Consider *O'Riley v. U.S. Bank, N.A.*, 412 S.W.3d 400 (Mo.App. W.D. 2013). In this case, the trust in question provided that the trustee had discretion to distribute income for the "care, support, maintenance and welfare" of the settlor's wife as well as the "care, support, maintenance, education and welfare" of his descendants. The trustee also had discretion to distribute principal to such beneficiaries if income were insufficient for their "care, support, maintenance, education, comfort and medical or other attention or emergency." The trustee was directed to favor the spouse over the descendants.

After the spouse's death, the trust was to be distributed to the then living descendants. They, however, sued arguing that the trustee failed to consider the assets that were available to the spouse and that therefore distributions made to the spouse breached their duty of impartiality and were in excess of their authority. The court found that the trustee had a well documented process to periodically evaluate its distribution decisions and also ruled that the trustee did not have to review financial information from each beneficiary before making distribution decisions.

b. Full Group of Family Members (or Other Group)

There is likely a predisposition of drafting attorneys to move away from large groups of beneficiaries within a single trust – but there are clients who do wish for these structures and there are times that they align with broader goals within a family.

Do we, as drafters, overly limit our clients' use of these structures?

c. Individuals Plus Charity

Authorized distributions to charity from a trust should generally qualify for the income tax charitable deduction under I.R.C. §642(c). Unlike the deduction for individuals under I.R.C. §170, a trust's deduction can be 100% of its income and is not subject to the cutback of deductions rule of I.R.C. §68 or other limitations applicable to individuals.

2. Trusts for Individual Beneficiaries.

It seems that trusts for single individuals are less common than pot trusts outside of situations that require them – marital deduction trusts, QSSTs, and the like. However, such trusts still require consideration of remainder beneficiaries. In other words, no trust is a single beneficiary trust. Query, though, how might drafting to direct only consideration of a particular beneficiary or to identify that beneficiary's needs as primary impact trustee action?

3. Beneficiary Trustees

Trusts may often have one or more beneficiaries as the, or a, trustee. Such trusts require certain standards of distribution if there is a desire to maintain estate tax exclusion or other protections. Accordingly, trustees' discretion or ability to make distributions to themselves are routinely subject to an ascertainable standard. *See, e.g.,* Treas. Reg. § 25.2511-1(g)(2). While this is relatively settled practice, the impact on the trustee/beneficiary's position in both roles on their duties as to other beneficiaries is more open.

4. "Beneficiaries" of Non-Distributions

In addition to distributions, trusts can and generally do provide flexibility to allow beneficiary use of assets or for the ability to make loans. These approaches have a number of advantages and also do not typically have income tax consequences for a beneficiary who, for instance, makes use of a property held within the trust on a rent-free basis. However, these structures might also require consideration of overriding a duty to diversify or other fiduciary limiters.

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(b) As used in this section, "beneficiary well-being programs" means seminars, courses, programs, workshops, counselors, personal coaches, short-term university programs, group or one-on-one meetings, counseling, family meetings, family retreats, family reunions, and custom programs, all of which having one or more of the following purposes:

(1) Preparing each generation of beneficiaries for inheriting wealth by providing the beneficiaries individually or as a group with multi-generational estate and asset planning, assistance with navigating inter-generational asset transfers, developing wealth management and money skills, financial literacy and acumen, business fundamentals,

entrepreneurship, knowledge of family businesses, and philanthropy.

(2) Educating beneficiaries about the beneficiaries' family history, the family's values, family governance, family dynamics, family mental health and well-being, and connection among family members.

(c) The trustees and advisers of a Beneficiary Well-Being Trust shall provide the beneficiaries individually or as a group with beneficiary well-being programs at such times and in such manner as set forth in the provisions of the governing instrument, or in the absence of such provisions, then at such times and in such manner as the trustee may determine is appropriate, in accordance with § 3315 of this title.

(d) Subject to the fiduciary duties and authority of the trustees and advisers under the governing instrument and applicable law, the trustees and advisers of a Beneficiary Well-Being Trust shall pay from the trust the costs and expenses of beneficiary well-being programs.

(1) The payments under this subsection are an expense of administration of the trust to the extent permitted by law.

(2) A trustee itself may provide beneficiary well-being programs, and may select, hire, retain, and pay providers of beneficiary well-being programs whether or not the providers are third parties or affiliates of the trustee within the meaning of § 3312 of this Title.

(3) Each provider of beneficiary well-being programs is entitled to payment for providing a beneficiary well-being program, and a trustee is entitled to the full fiduciary compensation to which the trustee is otherwise entitled as trustee without

diminution for the fees and costs of the beneficiary well-being program, without prior notice or disclosure to any beneficiary of the trust.

(e) To effectuate this section, the governing instrument may provide for additional powers, duties, rights, and interests that may expand the purpose or scope of a beneficiary well-being program.

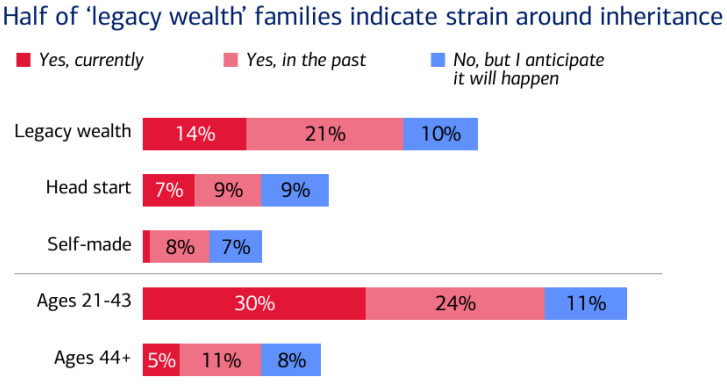
Added by Laws 2023, ch. 391,s 7, eff. 8/29/2024.

III. What Are Client Concerns?

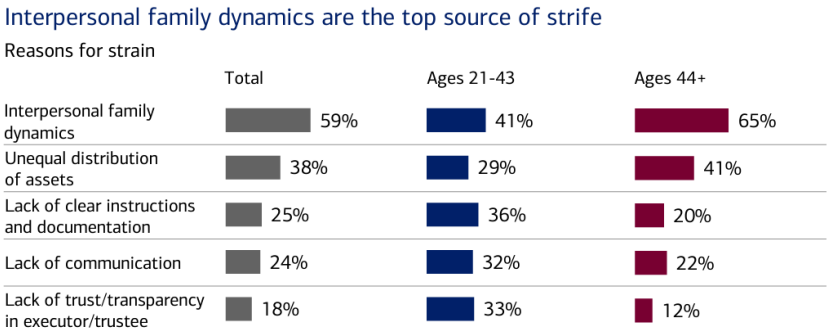
Many of our clients have significant concerns about the impact of wealth on their families and on themselves as well. Consider the following – a fair amount sourced from an ongoing, annual set of surveys initiated originally by US Trust and now continued by Bank of America:

A. Impact of Wealth on Inheritors

Nearly half of those who have received, or will likely receive, legacy wealth report current or anticipated stress/strain, with difficult family dynamics considered the top source of such strain.[1]

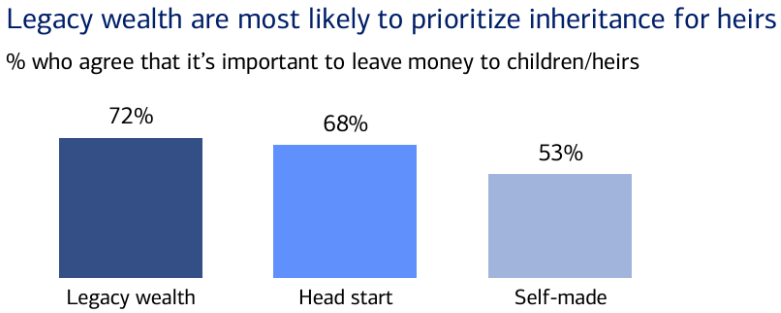


[1] Graphs/survey results in this section are from the 2024 Bank of America Private Bank Study of Wealthy Americans. This survey included a little over 1,000 responses from individuals 21 years of age or older who had at least $3 million in investable assets.



B. Goals of Those Who Will Be Passing Assets On

There is much discussion about the significant wealth transfer coming as both the "Silent Generation" and Baby Boomers will transition assets to their heirs - $84 Trillion by some estimations (I recently saw a $128 Trillion number in an article!), which seems to be a rough "average" of predictions regarding the value of wealth transfers coming. Regardless of how accurate the numbers are, the numbers are huge. So what do those making these transfers think about this event?

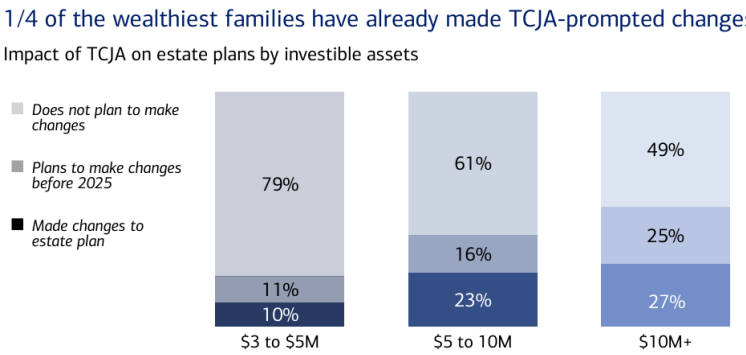


What level of priority is an interesting metric to consider and track – however there can be a fair amount of iceberg beneath the surface of these responses. How big of a role do fear, confusion and lack of knowledge impact what clients choose to do? Or choose to express as their goals and concerns? How risk averse are they regarding the impact of wealth on their families from one to the next?

In the limited time that the book has been out, it seems that many individuals have a good sense of what their goals and concerns might be – but often have difficulty putting words to those goals and concerns. If that is so, part of the advisor's job may be to help draw out their client's goals and concerns so that they can lead to something actionable and positive for them and their families. Easier said than done.

C. Who Is Taking Action?

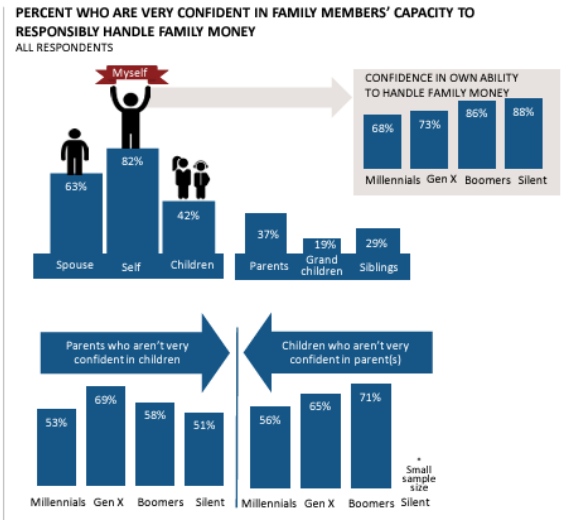
With the caveat that saying you plan to take action and actually doing it may be very different, consider the below.



D. Concerns Over Heirs

Consider the below – which is taken from the 2017 US Trust survey report:

- Eight in 10 of the wealthy are very confident in their own ability to handle family money responsibly
  - Millennials are somewhat less self-confident than older generations
- Only four in 10 (42%) overall – including about half of the Silent generation (49%) – are very confident that their children will use the money they receive responsibly
- Even fewer – 19% – are very confident in their grandchildren and adult siblings (29%)
- Yet skepticism goes both ways. Many adult children question their parents.
  - Fifty-six percent of Millennials, 65% of Gen Xers and seven in 10 Baby Boomers aren't very confident that one or both parents has the capacity to handle family money responsibly



IV. A Suggested Approach

In the book, *How to Not Ruin Your Kids with Money*, I propose a three-pronged approach to positive generational wealth transfers:

Define/Understand the Problem for the Particular Family
Define the Target Goals and Responsibility for Their Achievement
Work to Accomplish the Goals Set

This is not really a conversation about the details within the above plan – you can read the book if you'd like the details. But I do want to highlight what I think is a healthy and productive allocation of responsibility between clients and advisors to achieve better outcomes for families of wealth.

A. Prepare Yourself for the Conversations

You do not need to become a family dynamics expert to assist families in achieving successful multi-generational wealth transfers. But you should have some general familiarity with the subject if you're going to serve wealthy families. As an example, if you are going to serve an individual or couple worth more than $10 - $15 Million, you should have some sense that the federal generation-skipping transfer tax may come into play in their family – and if you don't have a comfort level in that area, get some help from a colleague or adjacent advisor who has sufficient expertise in that arena.

B. Hold Your Clients Accountable

I submit that our clients need to be the primary determiners and drivers of their primary goals – and should be able to identify them. Unfortunately, most do not seem to have that down with sufficient certainty and thoughtfulness. Get them appropriate resources to accomplish that task, encourage them to do the work, and use the results (once accomplished sufficiently) to guide what your work with them might be.

C. Facilitate the Process

In our discussion, we will consider the "quarterback" problem – something discussed a bit in the book. With an encouragement to engage in that topic and to be self-reflective on the point, be ready to step in to facilitate increased conversations within the generations and other advisors. But becoming the driver of the experience is fraught with many negatives and difficulties.

D. Make Sure the Next Gens are Included

It's not just good business, it is mission critical that our clients' children and grandchildren are included and aware of the planning process and objectives – at least when of age and sufficient maturity. This does not necessarily mean that the Next Gens get to "decide the rules" or have full transparency on a client or family's net worth. But it does mean that those impacted by the planning and those who to at least some degree will be

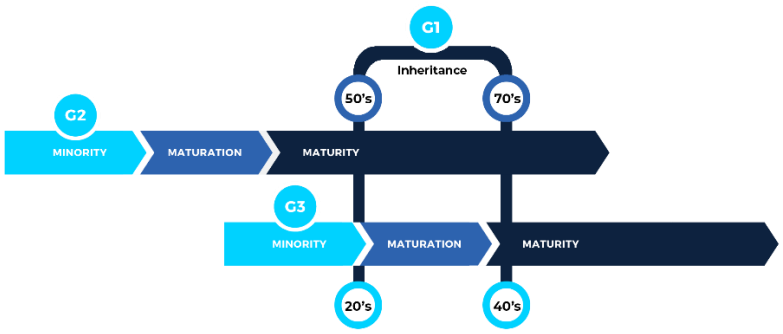
charged with implementing the planning have some stake and ownership of this multi-generational project.

It is very difficult to move from a 1:1 (Client:Advisor) dynamic to a 6:1 or 8:1 or 24:1(Family:Advisor) dynamic. However, your client or client couple cannot dictate the personal legacy that will follow. They may be able to decide how much comes out of a trust to each grandchild in 50 years and may be able to set the stage for a 150 year management of a pool of assets – but our clients cannot legislate that great-grandchildren will become the type of people they envision nor that future generations will espouse certain, cherished values.

E. Think in the Fourth Dimension

A deficiency that many who do not practice in our world have – a deficiency that too many who do practice in our world also have – is the over-focus and consideration of the present and the present circumstances. The future is so variable that the difficulty in thinking through a million permutations of outcomes can lead to a complete dismissal of what's ahead. In the estate planning world, the phrase "we can change it later, right?" is probably the clearest indication of that dismissal for an individual.

While there is a point that plans may need to change, it is clear that life will change. And the impact of the passage of time has some predictabilities. Reflect on how the most likely timing of an inheritance might impact a set of children or grandchildren – with the graphic below as an aid.



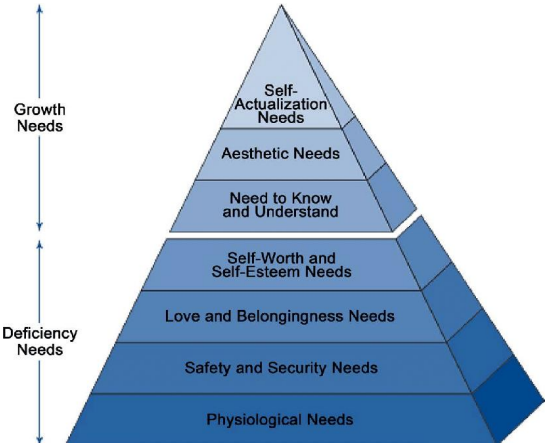
F. Treat Each Other Well

The Holy Grail of planning is for knowledgeable clients to be engaged in the process with other skilled, compassionate, advisors who stay in their

lanes and work well and collaboratively with each other. We don't play as well in the sandbox with each other as we could – but being mindful of the importance to clients that we do and the professional benefits and personal satisfaction that comes with working well with others should drive us to do better.

V. Other Considerations – Particularly for Higher Levels of Wealth

A. The Bottom and Top Halves of Maslow's Hierarchy of Needs



Maslow's Hierarchy of Needs provides an interesting lens to look through with respect to those that we serve. For instance, first generation wealth creators are more likely to have experienced periods of some risk to satisfying their basic physiological needs and financial security than their offspring. That experience is often seen as valuable, desirable and/or formative by the wealth creator and is often something that they wish their heirs to experience (although frequently more on a theoretical basis).

The greater the available (or in some ways expected future) wealth, the less the bottom half of the hierarchy is relevant. No question that there can be disconnects and deficiencies in relationships or any individual's experience that can require your clients to drive you back down the pyramid. But in a healthy, supportive environment, the heirs move more to trying to determine what really is the purpose of the wealth beyond basic provisioning and the ability to get more and/or "nicer" things.

B. Purpose of Wealth vs. Values

Moving into this conversation often requires one to re-shape their own view of what wealth is for. Being wealthy may be something that most would choose over being of modest means, but that does not necessarily mean that what one chooses makes them "better" or "worse."[2] And it certainly can be said that having ten times more than what you might ever

[2] There is no doubt a rich spiritual and ethical conversation to have on this subject. And many clients – both religious and irreligious – are having on this very point. We do not likely have time to explore this as deeply as the topic deserves, though. Reach out to me if you'd like to explore this offline.

need or want is not appreciably a different position to be in than having twenty times more than what you might ever need or want. At least if you aren't motivated just by having a higher score than the next person – a game that most people in this position eventually tire of.

I suggest that determining the purpose of wealth in this stage becomes extremely important. Even more so than identifying individual or family values. Purpose is generally informed by those values, but is in some ways the propulsion that can inspire action, involvement and interest in participating in family wealth activities.

At the present time, I would suggest that there are four primary categories that might be motivating purposes to managing wealth:

Financial Provision and Management

Personal Experience and Fulfilment

Family Experience and Fulfilment

Charitable and Philanthropic Activity

There are overlaps and feedback loops within the above categories. And of course subcategories to each of the broader ones. But which is primary can lead to wildly different choices by a family or individual family members.

C. Generational Pessimism

There seems to me to be a significant issue/difference in the rising generation – the lack of optimism regarding whether their financial futures will keep pace with their parents and grandparents. Of course no generation is a monolith, but this pessimism may be expressing itself in ways that will have both personal and societal implications – lower birth rates, housing choices, savings rates, and the like.

D. Mental Health Concerns and Societal Divides

Whether tied together or not, the current generation seems to have been more impacted by mental health concerns than prior generations – and it is unlikely that this is just a question of diagnosis or awareness increases. Advisors would do well to educate themselves as best they can about these matters. Similarly, the divide between political or other ideologies within

families and society more broadly will also create challenges for advisors to navigate.

VI. Resources

You are welcome to utilize the book, *How to Not Ruin Your Kids with Money*, to consider this topic in greater depth. You can find it pretty much everywhere online, including in eBook (Kindle, Nook, etc.) and audiobook versions (Audible, Spotify, etc.) – with print versions also available direct at www.markshiller.com or www.aevitaspress.com.

I have also recently released a "Values Card Deck" that can serve as a tool to help clients identify their core values and to facilitate discussions within families (or non-family teams, for that matter) to learn how they might come together on such matters. Those, too, are available at www.markshiller.com or www.aevitaspress.com.

If you are interested in knowing more about it and if or when an Advisor's Guide is released, please drop me an email at mshiller@certuslegalgroup.com and I'll make sure that you stay in the loop.

Lastly, what I've put together is coming from just one person's point of view – and that might not resonate with everyone. Thankfully, there are many other resources out there – books, podcasts, blogs, articles, etc. – that you can draw from to educate yourself. Take advantage of them! Your clients will thank you.