Preserving Wealth Through the Generations – A Foundation to Flourish

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Preserving Wealth through the Generations – A Foundation to Flourish

This paper is a call to action for families to be actively engaged in preserving family wealth or capital through the generations as a means of the family's long-term financial support. However, this endeavor will be useful beyond that important end. The collaborative, inclusive journey of families deliberately and actively engaging in preserving wealth through the generations is a legacy of trust and faith beyond monetary wealth. It is about establishing a framework and foundation that allows future descendants greater freedom to flourish, to reach their full potential.

I. Maintaining Capital within the Family

A. Source of Long-Term Financial Security

Having security that family members will not be destitute is protection that much of the world's population is without. Even more important than that, in an evolved society, providing financial security to family members can enable them to operate on a higher level, as explained below.

One of the principal ways a family can provide for the welfare of its members is to preserve any capital accumulated within the family and, if possible, to focus each generation on increasing the family capital pool as the family tree expands (hereinafter this is sometimes referred to as the "preservation plan"). Being engaged in this effort, which will be elaborated upon below, will help provide for the family's long-term financial support.

B. Disinheritance to Achieve Productive and Engaged Children – A Questionable Idea

Parents and grandparents universally desire that their children and grandchildren lead productive and engaged lives. Every parent can identify with this goal. The image of a ne'er-do-well rich kid, idle and without purpose is disturbing and contrary to much of what parents and grandparents believe is wise or appropriate. The goal of having productive and engaged descendants is laudable and few would argue with that.

To remedy this concern, much focus has been given to one "sink or swim" strategy that limits the inheritance (hereinafter sometimes referred to as the "limited inheritance" plan). Some are of the opinion that money can ruin children and that they should not be given much – i.e., give them just a little and let them sink or swim. The idea is that the children should struggle, and that this will build character and instill proper values.

Northern Trust, in its book "Legacy, Conversations About Wealth Transfer," frames the problem as follows: "Perhaps the question really is 'How much is *too* much?' Those who can afford to leave their children considerably more, frequently and purposely leave them less. Their hope is to better motivate their beneficiaries."[1] Warren Buffett asserts that the perfect amount to leave children is "enough money so that they would feel they could do anything, but not so much that they could do nothing."[2] One commentator wrote:

> *Many of our clients and prospective clients reference this famous quote. They are concerned about how much wealth to pass along to their children. While they like the idea of giving them enough financial security to choose meaningful work, they worry whether a substantial inheritance would still let their children be productive members of society.*[3]

Another commentator warned in his article addressing the question of how much to leave the kids:

> *But, if we aren't careful, legacy giving plans may backfire. Sacrificing while raising your kids so they can enjoy a better life is a time-honored and natural parental role. But what is the point of denying yourself in retirement so that your grown children can enjoy an extravagant lifestyle, after you die? If they're in the middle of careers, a large inheritance could be downright destructive, undermining their motivation in life. The sense of entitlement that comes from unearned wealth can stunt growth, subvert meaning, and contribute to depression and destructive behavior.*[4]

Following the model of Mr. Buffett and others, parents adopting the limited inheritance plan are giving the bulk of their wealth to charity. It's not just billionaires that are using the approach. According to CNBC, many baby boomers of far less wealth are following this path.[5] For the uber-wealthy, Mr. Buffett has for years been promoting his "Charitable Pledge," which is a commitment

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[1] Northern Trust, LEGACY, CONVERSATIONS ABOUT WEALTH TRANSFER, p. 154 (2d. 2011, TriMark Press).
[2] Roxanne Roberts, Why the super-rich aren't leaving much of their fortunes to their kids (Wash. Post, Style section, Aug. 10, 2014).
[3] David Geller, My Challenge to Warren Buffett (Huffington Post, June 11, 2016).
[4] Darrow Kirkpatrick, *How Much Should You Leave to Your Kids?* (Time, October 10, 2016).
[5] Julie Halpert, Boomers mimic Warren Buffett when it comes to inheritances (CNBC, March 9, 2015).

by the world's wealthiest individuals and families to dedicate the majority of their wealth to philanthropy.

This paper is not suggesting that charitable giving stop. Quite the contrary. As explained in sections below, charitable planning can be used in an inclusive and positive way within the family. Charitable planning can allow the family to keep control of "social" wealth that otherwise is frequently paid to the government in the form of taxes. In effect, charitable planning can work synergistically with the goal of maintaining generational wealth.

This limited inheritance plan is a questionable approach for numerous reasons.

1. Negative Act – Cannot be Best Idea

The goal of these parents, for their kids to be productive and engaged, is laudable. But their means to meet that goal, to deprive them of much of the parents' property, is misguided. Think about this basic point, the parent is saying I want "x" behavior (i.e., the productive and engaged child), and to achieve that I am not doing "x" (i.e., not giving you the wealth). Imagine explaining that to the son, daughter or grandchild. Where is the parent's positive, self-affirming, inclusive action to achieve the parent's desired result? To these parents I suggest: "*If your best idea to achieve this fine goal is a negative act, then you have not thought enough."*

2. Think about the Child's Point of View.

Many times, the parents who created the wealth, did so at the expense of not spending time with the children. Frequently it is the father who worked long hours and in effect took time away from the children to build a business, medical or law practice. To not give the children the wealth accumulated from those efforts, might be the last, worst act. Imagine a child that already felt the parent's absence during his or her formative years, harboring the suspicion that the parent did not really care about him or her. Receiving little inheritance might solidify the suspicion – i.e., "I always thought the old man didn't care about me and his final act of providing this 'limited' inheritance proves it." The child's point of view might be that the parent has robbed him or her of both the parents' time and treasury. So is it any surprise that some of these children might harbor feelings of disappointment in their parents?

3. Maslow's Hierarchy

You probably recall Maslow's chart of needs or motivations from college Psychology 101. This chart, developed by Abraham Maslow in his 1943 paper "A Theory of Human Motivation,"[6] stuck with me since learning about it – probably the only concept that I could point to from that class. The chart resonated because it illustrates a path and certain markers to being able to look back at one's life and feel a sense of accomplishment, purpose and fulfillment. Self-actualization!

On the bottom of the pyramid is physiological needs, shelter and clothing, etc., then safety and security above that. Dr. Maslow observed that if a person's physiological needs are unsatisfied in an extreme fashion, then all other needs may become non-existent or pushed to the background. When this need is satisfied, then at once the person's motivations will become dominated by the next higher need.

> *"Every person is capable and has the desire to move up the hierarchy toward a level of self-actualization. Unfortunately, progress is often disrupted by failure to meet lower level needs. Life experiences, including divorce and loss of job may cause an individual to fluctuate between levels of the hierarchy. Therefore, not everyone will move through the hierarchy in a uni-directional manner but may move back and forth between the different types of needs."*[7]

Dr. Maslow observed that only one percent of the population becomes fully self-actualized because our society rewards motivation primarily based on esteem, love and other social needs – not

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[6] Maslow, A.H., *A Theory of Human Motivation*, Psychological Review, vol. 50, p. 370 (1943)(accessible here). For purposes of illustrating the ideas expressed herein, this paper does not attempt to outline or contrast other models of human behavior with Dr. Maslow's theories on motivation. In this sense, the reliance on Dr. Maslow's work is in the interest of simplification and brevity.
[7] McLeod, Saul, *Maslow's Hierarchy of Needs*, Simple Psychology (published 2007, updated 2016).

necessarily rewarding a person for achieving one's full potential. But even these motivations, esteem, love and other social needs, are higher on the scale than the foundational survival motivations.

Consider that by maintaining the family wealth, families help future descendants beyond the chart's base levels. Why wouldn't parents want to give children a leg up the hierarchy and spending less of their time on the foundational levels? During his time in Paris, John Adams wrote to his wife, Abagail, that it would be delightful and instructive to describe with eloquence the gardens and statuary around the city. He recognized his responsibility and that of his children in creating the favorable circumstance whereby his grandchildren could study the higher arts. While written about 150 years before Dr. Maslow published his chart, President Adams reflected the desire of many parents that their children and grandchildren be positioned to function at a higher level – not struggling to build the foundation, again and again:

> *To take a Walk in the Gardens of the Palace of the Tuilleries, and describe the Statues there, all in marble, in which the ancient Divinities and Heroes are represented with exquisite Art, would be a very pleasant Amusement, and instructive Entertainment, improving in History, Mythology, Poetry, as well as in Statuary. Another Walk in the Gardens of Versailles, would be usefull and agreable. But to observe these Objects with Taste and describe them so as to be understood, would require more time and thought than I can possibly Spare. It is not indeed the fine Arts, which our Country requires. The Usefull, the mechanic Arts, are those which We have occasion for in a young Country, as yet simple and not far advanced in Luxury, altho perhaps much too far for her Age and Character.*
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> *I could fill Volumes with Descriptions of Temples and Palaces, Paintings, Sculptures, Tapestry, Porcelaine, &c. &c. &c. -- if I could have time. But I could not do this without neglecting my duty. The Science of Government it is my Duty to study, more than all other Studies Sciences: the Art of Legislation and Administration and Negotiation, ought to take Place, indeed to exclude in a manner all other Arts. <u>I must study Politicks and War that my sons may have liberty to study Painting and Poetry Mathematicks and Philosophy. My sons ought to study Mathematicks and Philosophy, Geography, natural History, Naval Architecture, navigation,</u>*

> *Commerce and Agriculture, in order to give their Children a right to study Painting, Poetry, Musick, Architecture, Statuary, Tapestry and Porcelaine.*[8]

Dr. Maslow's hierarchy, however, recognizes that functioning at a higher level, including the higher arts as President Adams describes it, is not just a means to itself, but a step on the journey towards reaching one's full potential – to become self-actualized.

Once I heard a presentation that argued humans are more creative and productive when functioning in the "heart" frequency rather than the "survival" frequency. The presenter illustrated this idea in the context of a work or employment setting. We have all experienced times in the work world when we are just trying to survive – i.e., functioning in survival mode. The speaker pointed to evidence that workers function at a higher level and are more creative and productive when they experience a comfortable, safe work environment. The analogy to Dr. Maslow's chart is spot on with survival mode being the functional equivalent of physiological, safety and security needs. Why would an employer want employees struggling in survival mode rather than operating at a higher level where more is possible? Likewise, the suggestion is that needlessly imposing survival mode on future descendants through a limited inheritance is misguided.

It is also important to start distinguishing between struggling to satisfy the base levels, the physiological, safety and security needs, and struggling to achieve the higher motivations, those struggles associated with achieving one's highest purpose. One idea expressed in this paper is that the former struggles are not necessarily helpful or instructive in the latter, though they might be in some cases. Moreover, the time and energy involved with the former may, in some cases, detract from the time and energy that could be devoted to the latter.

4. Unequal Opportunities to Create Capital

A significant percentage of baby-boomers are first-generation wealth and many of these parents feel their children should earn their own money just like they did.[9] However, that construct may be too simplistic. It does not account for the fact that there are not equal opportunities to create wealth. The reasons for this are too numerous and obvious to list, but they include such

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[8] Letter from John Adams to Abigail Adams, post 12 May 1780 [electronic edition]. Adams Family Papers: An Electronic Archive. Massachusetts Historical Society. http://www.masshist.org/digitaladams/

[9] *See supra* note 4.

fundamental factors as changing economic conditions, availability of capital, interest rates, tax rates, labor sources, available technology, and on and on.

a. Knight to Peerage and Hamilton

For example, think of the medieval knight that fought for the King, actually survived and was awarded a royal title and land. Think of Alexander Hamilton who thought that fighting in the American revolution would allow him to "Rise Up" as depicted in the smash Broadway musical *Hamilton*: "If you gave me command of a battalion, a group of men to lead, I could fly above my station after the war."[10] These opportunities for wealth creation don't come along every generation. With these opportunities also came the significant risk of death.

b. Happenstance and Lottery

There are many other examples of wealth creation that cannot be replicated on demand, including (i) inheritance from a distant relative who died without any descendants, (ii) parents dying accidentally and leaving substantial life insurance proceeds or the circumstances resulting in a wrongful death recovery, and (iii) lottery winnings.

c. Passive Growth

Many other times substantial wealth is created because one family member held a particular stock for a very long period of time. It is not uncommon to see situations of one person or multiple family members holding securities in one company, sometimes representing stock originally obtained by a family member who was an employee or executive at the company, for 50 to 75 years. Over this period of time, the holdings in the company can become a fortune, all without much thought or effort of the family members holding it.

However the wealth is created, the family can engage and be deliberate in preserving it, recognizing that creating significant wealth at each generation is remote.

5. Don't Overemphasize the Creation Phase as Compared to the Management Phase

There is also the point that many of those who created the wealth, overemphasize the value of the wealth creation phase. Some of these people do not place the same value on the subsequent phase,

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[10] Lin-Manuel Miranda, *Meet Me Inside*, from HAMILTON, AN AMERICAN MUSICAL.

the management and preservation of wealth. Recall the knight that fought for the king and was awarded a peerage and an estate. If the knight's subsequent descendants responsibly manage and grow what their ancestor started, protect it from all the risks to which the wealth is exposed from time to time, isn't this phase just as important to even more remote descendants benefiting from the wealth. That is, to the fifth generation of the family benefiting from the wealth, is the initial creation of the wealth by the first generation more important to them than the second, third and fourth generations' management and preservation of it? Each generation is part of a seamless line, each dependent on the other. To the fifth generation each of the prior generations must be successful, the first in creating it and the others in preserving it, for the fifth to be vested with its benefits. Therefore, "success" to the second, third and fourth generations is and must be the proper management and preservation of the wealth.

Within families, consider whether it is arrogant to value the creation process more than the management process. Sure those who create the wealth are likely to value their contributions as being the most important to the family circumstance. This is analogous to a sales force valuing its contributions to a company as being more important than manufacturing, finance, etc. As opposed to a competitive business setting, however, it may be more corrosive in a family setting for the wealth creator to place his or her contributions as superior and therefore by comparison denigrating those family members that may take on a management and preservation role. In the long-run, to the fifth, sixth and future generations, it is a seamless line of ancestors, responsible for their circumstance.

6. Inefficient to Recreate Capital Pool Vs Maintaining Existing Capital Pool

Even if it were possible for each generation to recreate the capital pool, it would be inefficient to do so. Imagine a great city like New York City or London having to recreate its infrastructure, monuments and decorations with each new administration in the Mayor's office. All would likely agree that would be insane. To the contrary, in our governments, we expect each generation to preserve the past heritage, and to manage and improve the circumstances going forward. Why then would a family not wish to preserve its capital? Why would a family not wish and expect each generation to manage and build on the capital pool?

7. Unintended Consequences

The idea of the limited inheritance may also be poorly executed and impractical for plain human reasons. For example, Peter died accidentally and left his young children a "limited" inheritance of $3 million each and remaining wealth to his favorite charity. He felt strongly that he did not want his wealth to be the cause of his children being unproductive and unengaged. However, he and the children lived in an estate valued at more than $10 million. Following Peter's death, his "limited" inheritance plan meant that his children had to leave their family home. The safety and security of the physical space to which Peter's children were accustomed abruptly changed based on the vagaries of the timing of his death. That's a questionable plan, just on a human level.

The example of Peter is cause to consider the question of whether children of the wealthy are less than other children. Peter's children may have had Dr. Maslow's base levels covered during Peter's lifetime, but they are just like other children deserving of love, affection, and belongingness, as well as respect. Having the base levels covered does not mean they have no problems. The question in Peter's case is would less wealthy families consider forcing the children out of the family home, a disruption to be avoided, if keeping them there is otherwise financially and logistically possible. Therefore, in Perter situation, are Peter's children "less" deserving of the same consideration because they are children of a wealthy person? In fact, it is safe to say that Peter's limited inheritance plan potentially impacted his children at every level of Dr. Maslow's hierarchy.

8. Avoid Paternalism and Arrogance

This last section in this topic, calls on parents who are considering the limited inheritance plan to pause and honestly consider their own motivations involved in the decision making process. For example, a few wealthy parents may feel that they created the wealth and are entitled to do with it as they please, regardless of the consequences to the other family members. For some this may be the final opportunity to exhibit their control. Some parents might savor the final notoriety of giving the wealth to charity. Parents should consider the legacy they really want to leave.

Sometimes parents feel their children exhibit different (i.e., less admirable) values, ethics and goals than the parents did as children and these feelings become negative motivators in relation to wealth. Many of these same parents feel and express how lucky the children should feel in relation to the parents' childhood circumstances. In a sense, some parents are jealous of the cushy formative years their children have enjoyed. But consider that the parents' experience is not that of their children. I recall a client's description of growing up during the years of WWII and as a kid pulling the aluminum foil off of gum wrappers, making balls of the foil and selling it for pennies. During that time, aluminum was a prized commodity and needed for the war effort. His children, however, grew up privileged and during a completely different time. Therefore, it is important to be realistic in relation to the background and time of the children and grandchildren, considering their actual frame of reference and experience. Of course, the parent's history and background can be important for the children to understand and appreciate. It gives context and interest, but that is quite distinct from having shared the actual parent's experience.

Consider how Mr. Buffett frames his stated approach for giving children "enough money so that they would feel they could do anything, but not so much that they could do nothing." Consider the texture of these words and their focus. These words could be, well will be, interpreted as "I don't trust you" to make reasonable and appropriate decisions and "I will therefore paternalistically make decisions for you." Is that the message the parents really want to convey?

If effect, the words evoke a perception of needing to protect the children from the parent's money. That the parent must decide for the children because otherwise the parent's money will lessen them. Where is the trust in that message?

Are children of wealthy families "less" than children of other families? If family wealth allows the children to skip the struggles to satisfy the base levels on Dr. Maslow's chart, does that somehow make these children less. Perhaps some of these questions and attendant attitudes derive from the United States being in many respects a meritocracy. Inherited wealth can create feelings of guilt in the inheritor and in others relating to the inheritor that the inheritor is not deserving because he or she did not earn the wealth, did not merit it.

Dr. Maslow observed:

> *Even if all these needs are satisfied, we may still often (if not always) expect that a new discontent and restlessness will soon develop, unless the individual is doing what he is fitted for. A musician must make music, an*

> *artist must paint, a poet must write, if he is to be ultimately happy. What a man can be, he must be. This need we may call self-actualization.*[11]

The idea being expressed is that this highest motivation is automatic if the other motivations are satisfied. Consider that! Parents do not need to paternalistically push their children to achieve their highest potential – the motivation to do that is wired in. The parents focus should be to help create the circumstances for the other needs to be satisfied and stand back. Of course, the parents cannot be the "decider" of the child's highest potential. The child must have the freedom to pursue his or her own expression, which Dr. Maslow noted is a precondition to the satisfaction of the basic needs.

Moreover, there is no indication in Dr. Maslow's paper that the child must satisfy the lower level needs himself or herself, rather than having the base need satisfied by family wealth. Of course, family wealth cannot satisfy the need for love and self-esteem,[12] but wealthy parents are just as capable in successfully promoting the satisfaction of these needs as other less wealthy parents. Therefore, consider the extent to which the parents can help to ensure the fundamental needs are satisfied, including love and self-esteem. The idea here is that the preservation plan can be part of a comprehensive strategy of promoting the circumstances to move beyond the base needs and allow the children and future descendants to focus on the transcendent highest motivation.

C. Engage in Planning to Preserve Capital through the Generations

Rather than choosing the limited inheritance approach, families should consider positively engaging on the mission to preserve the wealth or family capital within the family through the generations. Parents should give their children and grandchildren the challenge of managing and preserving the wealth, and to actually be industrious and increase the pool of capital as the family tree expands.

1. Tell your Child to Tell their Children's Children – "I was Thinking of Them"

The idea is to create a legacy of financial stewardship and inclusiveness. Each new generation should be educated on the efforts of the past generations, to know that the pool of capital to which they will benefit from and eventually control, exists as a result of the deliberate and intentional

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[11] Maslow, *supra* note 6.

[12] On the other hand, consider whether the limited inheritance plan would be interpreted as reflecting the lack of love and be counterproductive towards this goal.

efforts of their ancestors to provide this benefit. The new generation should also be educated that they are inheriting a legacy that carries with it a duty to be engaged and play it forward. This sense of duty is the glue that will bind the present and future generations to the past ones, and the past generations to the future ones. The trust is that each successive generation will be worthy and faithful to the legacy. This is a fabulously interconnected, inclusive and powerful message.

2. This is Inclusive and Challenge to Give

Parents engaging with their family to preserve the capital thought the generations might fail, just as the limited inheritance plan might fail to achieve the goal of having engaged and productive children. Importantly, however, at least with the preservation strategy the parents will have failed with a positive and inclusive invitation to participate. No strategy is guaranteed success. With the preservation approach, if it fails the descendants only have themselves to blame or perhaps circumstances beyond their control. They will not be able to blame their parents for not trusting them. But maybe, just maybe, the fruits of the preservation plan will help the children reach their full potential. One key to the preservation plan is to actually be engaged and deliberate – few great projects are accomplished by happenstance.

3. Develop the History of Goal Consciousness within the Family

Developing the history of the capital accumulation and its management to the present time will be an important effort for the family to undertake and appreciate. In some cases, the accumulation is quite deliberate and others happenstance. In either case, once the capital pool exists, the suggestion is that the goals going forward should be preservation and growth.

D. Foundation to Flourish

The suggestion is that the preservation plan can be used to create a foundation for future descendants to flourish in the higher arts or that activity that allows them to reach their full potential. Imagine one of the great cathedrals of Europe, say the Santa Maria del Fiore, the Duomo, in Florence. The cathedral's foundation is immense, many feet wide and several floors below ground. Building the foundation was a necessary prerequisite for the inspiring structure above ground. If you visit this great cathedral, it is the part above ground that demands your attention. The vast open spaces, the stained glass, and dome reaching to the heavens have been inspiring people for hundreds of years. These elements are the flourishes. It is the flourishes that are inspirational, heavenly and spiritual, and these flourishes were intentional and by design. By analogy to Dr. Maslow's chart, these elements of the cathedral represent the higher levels of functioning – i.e., the art, beauty, and the transcendence of reaching one's full potential.

As the analogy goes, the foundation of the cathedral is similar to satisfying the base layers of Dr. Maslow's chart for an individual, whereas the flourishes are analogous to an individual reaching fulfillment and his or her full potential. Without the physiological needs of food, shelter and safety satisfied, the individual cannot focus too well on flourishing and reaching his or her full potential. Preserving the family wealth will help the individual spend less time on rebuilding the foundation and more time on the flourishes that may lead to self-actualization.

Surely those building the foundation of Duomo likely struggled to do so and likewise many individuals struggle with satisfying the base layers in their individual lives. With the Duomo, the foundation has been supporting the enormous weight above since it was constructed. A wealthy family might do the same, in effect, build a framework that satisfies the base layers for its future descendants for centuries to come. Thereafter, in the case of the Duomo or the family, the focus is on flourishing, and reaching its and their full potential!

To be sure, shifting the focus to the flourishing phase does not eliminate all struggles. For example, Filippo Brunelleschi was the architect of the Duomo's dome, which was built from 1420 into the 1450s. Even today, you would be hard pressed to find a greater architectural achievement and certainly this project represented the best of Brunelleschi. He struggled greatly with the dome's design and construction, which was significantly larger than any prior dome constructed. Had Brunelleschi been bogged down with rebuilding the foundation, which had been built generations earlier, he would not have had sufficient time to flourish in the dome's construction. Shortening the flourishing phase is one danger of the limited inheritance approach.

1. The Tail of the Three Guys

Imagine three guys, all with roughly the same intellectual capacity. Guy A came from a modest family, Guy B from a wealthy family, and Guy C from an impoverished family. Guy A worked part time jobs, while attending public high school, worked during college and graduate school, and finished deeply in debt from Ohio State University with a Phd. in biochemistry. Guy A was passionate about designing new drugs and therapies for the treatment of cancers. He founded a biotech company that was immensely successful. Guy A struggled with the base levels on Dr.

Maslow's hierarchy until about year 10 of his biotech firm at which time it became very profitable. Guy A believes he is fulfilling his destiny and achieving his highest potential.

Guy B attended elite private schools, Yale for college, and obtained a Phd. from Stanford in biochemistry. During this time Guy B never worked for compensation, only internships that he and his advisors thought would be enriching to his studies or his personal development. All along Guy B never struggled financially, enjoyed a comfortable lifestyle, and played golf with his father frequently and vacationed with his family. Guy B was also passionate about designing new drugs and therapies for the treatment of cancers. He founded a biotech company that was immensely successful. Guy B borrowed funds from an ancestral trust to capitalize his company. He fully paid back the loans when his company became very profitable in year 10. Guy B believes he is fulfilling his destiny and achieving his highest potential.

Guy C worked part time jobs, while attending public high school, worked full time during college and graduate school. After about 10 years of attending college part time, he obtained a masters in biochemistry. While Guy C was passionate about designing new drugs and therapies for the treatment of cancers, he was burned out from working through college and felt that further borrowing to pursue a Phd. was too risky. Guy C works at the biotech company created by Guy A. Guy C believes he is doing meaningful work, but not necessarily fulfilling his destiny and achieving his highest potential.

Guys A and B merge their companies and become equal owners. Their paths were different but they eventually attain equality in their careers and joint forces as equals. With respect to Guy B: Should Guy B feel that he is less than Guy A somehow because Guy B never struggled with the base layers of Dr. Maslow's chart? Will others feel Guy B is less than Guy A for the same reason? Consider the types of statements people make: "yea, but I doubt Guy B would have been able to achieve his success without his family's money" or "Guy B is really bright, I give him that, but his family bought him the company." There is value to the struggles that Guy A endured on the base layers, but in relation to Guy B consider not overvaluing that struggle.

Being free of the concerns with the base layers, Guy B might have had more time to focus on the flourishing part, to find that cure or treatment for cancer. The value of more time to flourish might more than offset the value of struggling with the base layers as did Guy A. Moreover, Guy B might allow himself more freedom to think and act on a creative and innovative scale, to think big.

With respect to Guy A: Might Guy A feel like he could have achieved more if he had the advantages of Guy B or that he would have had additional time to focus on the flourishing part and regret having to spend so much time on satisfying the base layers? On the other hand, the extra efforts required to satisfy the base layers may have given Guy A some extra determination and drive.

Among the three guys, both Guys A and B are achieving what they believe to be their highest and best use. Guy C might have been more cautious than the other two because of fear of again struggling with the base layers. He opted for the safety of a steady job that afforded him a reasonable lifestyle, even at the cost of potentially limiting him from reaching his highest potential.

2. Preservation, Inclusion and Flourishing

I hope that parents reading this article are now imagining including the children in the mission of preserving and growing the family wealth, with the goal of keeping it going through the generations. This act of including the children is itself inclusive and is itself operating at the love and belonging level on Dr. Maslow's chart of needs. The parents in this dynamic are showing trust and faith in the children by bringing the children into the discussion and mission (as opposed to the opposite of excluding them from the wealth). But this inclusiveness is a two-way street, by taking this step the parents are including themselves too – the parents are now part of the group engaged on this worthy and positive mission. As a parent myself, I get no greater thrill than when my children include me into something they are doing without me having to ask.

The suggestion is that the preservation approach is also better suited to assist with achieving the goal of having productive and engaged children. Imagine the parents working with the children over many years to establish a framework designed to achieve the goal of preserving the wealth over the generations. This positive and inclusive approach should help position children and more remote descendants to reach their full potential and flourish. Therefore, the call to action is to get engaged and start building the foundation to flourish.

II. How to Achieve Preserving Capital through the Generations

Assuming the family agrees that the family should preserve the wealth through the generations, what's next? What's the plan of action? How will they implement it? This paper is not designed to answer all these implementation questions. This implementation phase is real work, but it's work that is worthy of steady and deliberate action. In some cases, it may involve creating a family council, family board of directors, family board of advisors, engaging family dynamic counselors, business entities, family banks, trusts, and on and on. Each family's journey may be different in the implement phase.

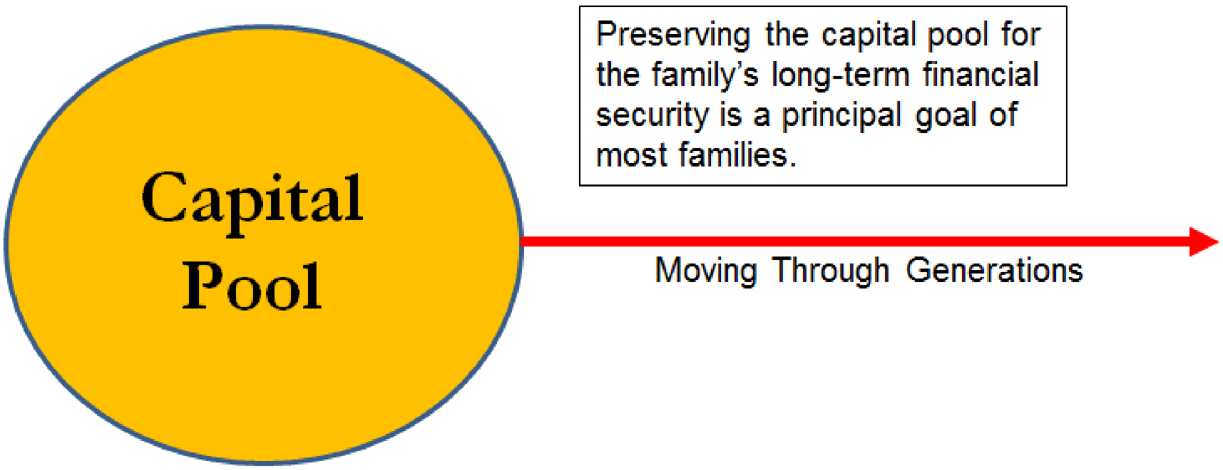
For example, the family might consider assembling a team of advisors, a family advisory board of directors, which might include a lawyer, accountant, financial advisor and wealth counselor. The engagement agreement for serving on the board should specifically indicate that the board's responsibility is to provide advice designed to ensure the family wealth is maintained through the generations, minimizing all the attendant risks associated with doing that. A broad outline of objectives should be articulated, perhaps including to double asset value every 25 years, keep up with inflation, and provide a meaningful and sustainable benefit to each generation. The goals for the benefits to be provided to each generation should be stated in order of priority, such as to fund and support education and the human development of the family members, to promote professional and business development and ownership, to educate family members on financial stewardship, etc. A timetable for meeting and review of progress is critical.

A. Being Engaged on the Goal

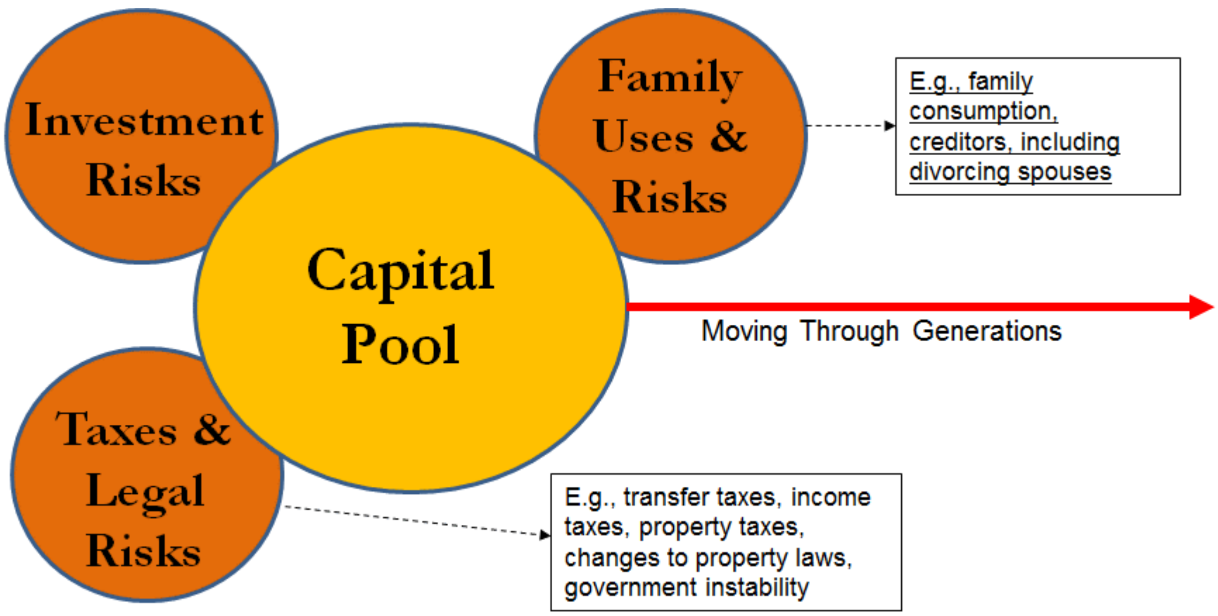
Many people talk about being creative and innovative. The first step, according to Elon Musk, to being innovative is that you must actually try to be innovative, and according to him, the second step is to think till your brain hurts. Likewise, if your family wishes to preserve the wealth through the generations, actually being involved in the project is a must. Actually focusing on the infrastructure and risks to achievement is critical. The first step is always the hardest. This may require agreement within the family on the goals and to identify a plan of action. Of course, there will be obstacles to overcome and thoughtful effort and attention is required.

B. Moving Wealth to Irrevocable Trusts is Best Strategy to Help Preserve Capital from Risks

In prior sections, the reasons were explained why a family should consider preserving its capital and moving it through the generations – why this should be a core component of the family's agenda.

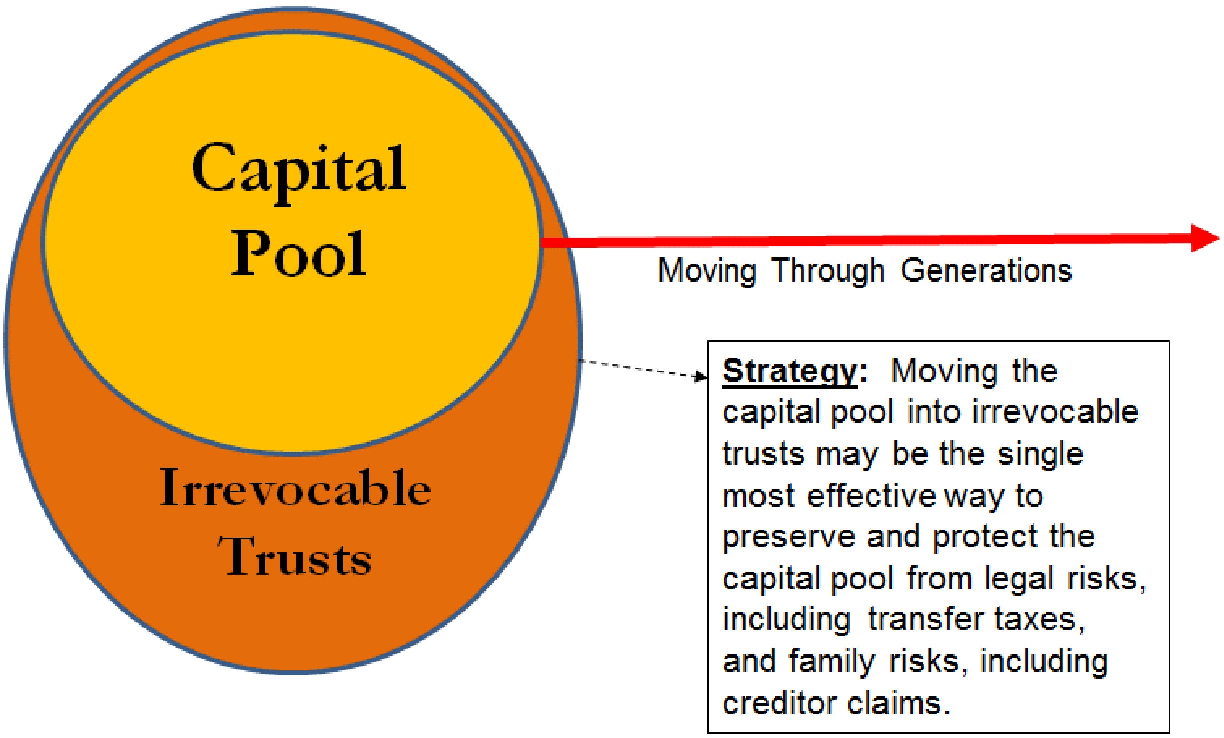


Families focused on this approach should start to consider the various risks associated with accomplishing this goal. Some of these risks are illustrated below.



The family would start the process of planning to minimize these risk over the long-term. From the legal and estate planning perspective, for example, a principal strategy might be moving wealth into irrevocable trusts. These trusts, which can take shape in many ways, represent an excellent long-term strategy to minimize many of the risks associated with moving capital through the generations. Trusts can provide tax and non-tax benefits.

Families unfamiliar with trusts may at first be reluctant to embrace the idea. Stories about inflexible trust arrangements are frequently told. It is important to understand at the outset that trusts are like cars. There are virtually an unlimited variety of trust structures, some good, some bad (and what is good and bad is itself subjective). Like cars, some trusts are more comfortable than others, some have more options, and so on. The limits are more related to the imagination of the family and skill of the attorneys involved, rather than the perceived limits of the trust law. The time and resources committed to the effort are also significant factors.



Another strategy towards this end is that it is frequently more efficient for tax purposes and more beneficial for non-tax reasons to transfer the wealth during lifetime. Traditionally, such transfers were accomplished through gifts, sales of appreciating assets to irrevocable trusts, so-called grantor retained annuity trusts (GRATs), insurance trusts, and the like. Over the past several years, a colleague and I have developed a quantitative approach of making annual taxable gifts (that uses gift exclusion and in some cases the payment of gift taxes) to irrevocable trusts, at a steady pace over a client's life expectancy, sufficient to achieve the target amount desired to be set aside for family. This approach could be used exclusively or in combination with other traditional techniques, such as GRATs. The approach is far more tax efficient than could have been predicted without the quantitative analysis.[13]

The strategy of moving wealth during lifetime to irrevocable trusts remains a sound, long-term estate planning strategy, even with the prospect of repeal on the horizon or in a post-repeal environment, for three primary reasons:

1. Repeal and Reinstatement

If the federal estate tax is repealed, wealthy families should be concerned that it will return when the political tides shift again. Both Secretary Clinton and Senator Sanders advocated an increased estate tax. Moreover, the modern estate tax has been around since 1916 – 100 years![14] If repeal of the estate tax is enacted, many attorneys would advise clients to immediately move assets to irrevocable trusts to protect against the possibility of it returning ("reinstatement"). Imagine counting on the repeal to hold, not implementing estate tax planning strategies in the expectation that the repeal will hold, and then when it's too late for estate tax planning to mitigate the impact of estate taxes, Congress re-enacts the estate tax shortly before death.[15] Repeal is alluring to some, but too ephemeral to warrant serious reliance.

2. Asset Protection

Transferring wealth to irrevocable trusts should provide the family with greater protection from creditors, including divorcing spouses. Trust law has long permitted the interests of trust beneficiaries to be protected from the beneficiaries' creditors, subject to certain exceptions. This is a significant non-tax advantage to using irrevocable trusts.

3. Prince Charles Effect

Life expectancy is nearing 100 years. The average life expectancy in the U.S. is 81.2 years for females; 76.4 years for males (based on 2012 data as reported by the Centers for Disease Control

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[13] If you would like to have a copy of our latest materials on the Annual Taxable Gifts Approach, which we discussed at the 51st Heckerling Institute on Estate Planning, the 46th Annual Estate Planning Seminar, Estate Planning Council of Portland, 42nd Annual Notre Dame Tax and Estate Planning Institute, and other programs, please email Sharon to request a copy.

[14] Prior to 1916, the death tax was repealed and revived a few times.

[15] It is also worth noting that about 20 states and the District of Columbia have separate estate taxes. In D.C. and Maryland, if the federal estate tax is repealed, the effective rate of tax at maximum rates would be about 16%. Moving assets into irrevocable trusts would mitigate the state estate taxes too.

and Prevention's National Center for Health Statistics). However, the statistics for the wealthy are substantially better: 91.9 years for females; 88.8 years for males.[16] This means that the children are often in their 70s before inheriting wealth from their parents – i.e., similar to Prince Charles, age 68, waiting to inherit the kingdom from his mother, Queen Elizabeth II, age 90! An additional benefit of transferring the wealth being targeted for family during the lifetime of the parents is that it will be available sooner to the children and more remote descendants (through irrevocable trusts designed as the parents see fit). This reduces the negative energy associated with inheriting wealth (and the prolonged anticipation of that event) upon death.

4. Changing Tax Laws

The merits of transferring wealth during lifetime to irrevocable trusts are durable and sufficient to justify continuing the approach notwithstanding changing tax laws. Of course, changing tax laws, as well as changing trust and property laws, should be considered and, when possible, used creatively to further the strategy. For example, as alluded to above, if the gift tax is repealed, it may allow greater freedom and tax efficiency in transferring assets to irrevocable trusts. Rather than thinking in terms of a repeal of the estate tax being a reason to abandon the strategy, creatively use any such changes to further the strategy that best supports maintaining capital within the family.

Some estate planners caution to pause in pursuing gifts or estate planning. After all, why make gifts if the estate tax will not exist upon death? The risks are too high. This concern has to be addressed with respect to two timeframes.

Suppose a family member is 70 years of age and expected to die within the next couple of years, because of a health concern. If the estate tax is actually repealed in 2017, there is a good chance that it will remain repealed for the remainder of the Trump Presidency. Baring a substitute death tax being imposed, this may justify not making taxable gifts that result in actual gift tax liability. Even this is complicated, however, because we need to know the gift tax rate that would be applicable and if a state death tax is applicable, etc.

Alternatively, if the same family member is expected to live to life expectancy, then do not change the long-term strategy based on the instability of the government's changing tax laws. It is unwise

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[16] *See Max Ehrenfreund,* The stunning — and expanding — gap in life expectancy between the rich and the poor (Washington Post, Sept. 18, 2015).

to plan on the idea that if repeal occurs it will hold long-term. As explained above, hoping for a different result after 100 years is more like a pipe dream.

5. Long-Term Strategy to Preserve Wealth

The government is not your friend in this realm. Sure it's possible that our government's changing tax policy is nothing more than the two parties' inability to agree upon a sound long-term policy, and therefore the laws ebb and flow based on the vagaries of elections and disparate groups' changing goals, as well as their ability to forge a coalition from time to time that results in an unremitting flow of changes to the tax rules and even more rumors of that. On the other hand, and more cynically perhaps there are some really smart people inside the government who know that if the tax landscape is constantly changing some taxpayers (and worse their advisors) will be stymied into inaction. Who benefits from inaction – the government? As improbable as the latter scenario may be, it simply does not matter. Either scenario produces the same result. The instability in the tax laws causes some families to hit the planning pause button, and more baffling it does the same thing to some professional planners who advise such families.

If you have a good long-term strategy, why change it based upon the whims of government. Second, the math of making gifts indicates that the downside is minimal. That is, gifts are so efficient in moving wealth that even if the donor dies during a period of estate tax repeal, the net to the family is only about 3% to 10% less than if the gifts had not been made, while also achieving the non-tax benefits outlined above. On the other hand, if the gifts are made and the estate tax is not repealed or reinstated post-repeal, the tax benefits of the gift planning will be dramatically more efficient for the family. One of the ways families frequently fail in preserving capital through the generations is to approach planning with timidity, without conviction, and too short-term of a planning horizon.

C. Role of Charitable Planning in Reducing Transfer Taxation

As mentioned above, charitable planning can be used in an inclusive and positive way within the family. Charitable planning can allow the family to keep control of "social" wealth that otherwise is frequently paid to the government in the form of taxes. The idea is that charitable planning could be designed to work synergistically with the goal of maintaining generational wealth.

For example, a common plan among wealthy individuals is to leave the remaining estate to charity, usually a pre-established private family foundation. This "remainder to foundation" plan is particularly employed when the older generation (G1) has made lifetime transfers as described above to provide for their family.

While these remainder-to-foundation plans mitigate estate taxes, they may not eliminate all concerns or tax issues for the family, the family company, or the family foundation. There is a better approach for the remainder-to-foundation plan or any large testamentary gift to charity. Rather than leaving the remainder of the estate directly to the family foundation, co-authors Richard Franklin and Jennifer Birchfield, in their article *The Intermediary CLAT Alternative to the Residuary Estate Family Foundation Gift*,[17] suggest using an intermediary charitable lead annuity trust, which will pay the estate remainder to the family foundation over a number of years, yet have the same federal estate tax benefit as a direct bequest. Rather than flooding the foundation with a large bequest that may overwhelm its existing operation, staging the large charitable bequest over a period of years allows the family foundation time to grow its operation to match its larger endowment. The authors illustrate through Monte Carlo simulations that this approach also enables the family foundation's endowment to be larger at the end of the CLAT term than the endowment would be with a direct bequest.

This approach works synergistically with the goal of maintaining generational wealth because the Intermediary CLAT allows for the possibility of a reinfusion of wealth to the succeeding generation (G2). The possibility of this reinfusion comes at no estate tax costs. The transfer to a CLAT also provides a framework in which the G2s could purchase private company interests or other illiquid assets from the G1's estate without running afoul of the self-dealing rules and perhaps provide a little more privacy.

The CLAT would receive G1s' remaining assets and pay an annuity to the family foundation over a period of time, say 20 years, as used in the illustration. The annuity payment is determined as a fixed percentage of the fair market value of the property transferred into the CLAT on the survivor G1's death. The annuity payments would be designed to have an aggregate present value (based on the section 7520 rate) equal to the fair market value of the remaining G1s' estates. A charitable estate tax deduction is available for the aggregate present value of the annuity payments. After the annuity payments end, upon conclusion of the 20-year term, the CLAT remainder passes to the

[17] Vol. 39, No. 3, ACTEC Law Journal, 355 (winter 2013 [actually published Jan. '15])(hereinafter "Intermediary CLAT").

G2s or for their benefit. The remainder interest held by G2s would have a zero value upon G1s' deaths and therefore cause no transfer tax (i.e., no gift, estate or GST tax). This allows for a reinfusion of wealth to the family in 20 years or so at no transfer tax costs. Moreover, the G2s could control and administer the CLAT and could take a reasonable trustee's fee for doing so.

D. Work Around Incompetence – Not all Equal

While we might all agree that no one is more than anyone else, and no one is less than anyone else, it is also true that we are not all created with the same talents. Some members of the family will be perfectly suited to be involved in the process of preserving the wealth though the generations, others will be disastrous. The family must be prepared to manage the process to avoid disasters.

By managing the process, the family does not need to be asset managers in the sense of picking stocks, but rather managing the process for picking a team of lawyers, accountants, financial experts, investment managers, etc. Mary, who holds a doctorate in art history, and who pursues her passion on a high level of Dr. Maslow’s chart, can annually meet with the family’s capital preservation team to review the goals, structure, and progress. Mary can play an important role in the process even though it’s not her principal career effort.