WEALTH MANAGEMENT

Estate Planning and Trust Management for a Brave New World: It’s All in the Family…What’s a Family?

O Wonder! How Many Goodly Creatures are There Here! How Beauteous Mankind is. O Brave New World that has Such People In’t. Shakespeare, The Tempest V. i.

R. Hugh Magill
Executive Vice President and Chief Fiduciary Officer
Blended, Multi-Generational Family

Wife 1 -- Husband -- Wife II

<table>
<thead>
<tr>
<th>Son</th>
<th>Son</th>
<th>Daughter</th>
<th>Daughter</th>
<th>Son</th>
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Blended, Multi-Generational Family

- Wife I
  - Traditionalist
- Husband
  - Traditionalist
- Wife II
  - Boomer

- Son
  - Gen X
- Son
  - Gen X
- Daughter
  - Gen X
- Daughter
  - Millennial
- Son
  - Millennial
Generalizations About Generations
Generational Assignments And Attributes

<table>
<thead>
<tr>
<th>Generation</th>
<th>APPROXIMATE BIRTH YEARS</th>
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<tbody>
<tr>
<td>Lost Generation</td>
<td>1883 - 1900</td>
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<tr>
<td>G. I. Generation</td>
<td>1900 - 1926</td>
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<tr>
<td>Silent Generation</td>
<td>1927 - 1945</td>
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<tr>
<td>Boomer Generation</td>
<td>1946 - 1964</td>
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<td>Generation X</td>
<td>1965 - 1981</td>
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<tr>
<td>Millennial Generation</td>
<td>1982 - 2002</td>
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</table>
Traditionalists - The Adaptive Generation

Defining Question: Where Were You on D-Day?

Technology Question: When Did Your Family Get a Radio?

Grew Up During Depression, Many in Multi-Generational Households

Parental Model – Breadwinner & Bread Baker

Children Obey Adults

Personal Responsibility and Self-Sacrifice Undergird Modesty

Character Traits:
- Dutiful
- Frugal
- Committed (Marriage, Employment)
- Respectful (Authority, Institutions, Government)
- Accelerated Adulthood

- Strong Work Ethic
- Delayed Gratification
- Decision Making: Command and Control
- 89% Religiously Affiliated
- 6% Have Tattoos

Traditionalist - The Adaptive Generation

Grew up during Depression, many in multi-generational households.
# Boomers - The Idealistic Generation

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<tbody>
<tr>
<td>Parental Model – Breadwinner &amp; Bread Server</td>
<td>Children Accommodated Adults</td>
<td>Competence and Expertise Before Self-Esteem</td>
</tr>
</tbody>
</table>

- Optimistic – Hard Work & Loyalty Lead to Personal Gratification
- Competitive (We Choose Sides)
- Rejected then Embraced Authority
- Adulthood Leads to the American Dream

- Live to Work
- Decision Making: Consensus
- 83% Religiously Affiliated
- 15% Have Tattoos

Character Traits:
Gen X - The Reactive Generation

Defining Question: How Old Were You When Your Parents Got Divorced?

Technology Question: When Did Your Family Get Its First Computer?

More Likely to Grow Up in a Divorced Household

Parental Model – Breadwinner & Breadwinner (Latch-Key Kids)

Children Teach Adults

Self-Reliance and Validation Lead to Self-Esteem (and Entitlement)

Character Traits:

→ Skeptical (Marriage, Corporations, Government)
→ Private
→ Suspicious of Authority
→ Adulthood Will be Less Prosperous than Parents'

→ Work/Life Balance is Very Important
→ Decision Making: Pragmatic, Independent, Impatient
→ 77% Religiously Affiliated
→ 32% Have Tattoos
# Millennials - The Civic Generation

<table>
<thead>
<tr>
<th>Defining Question:</th>
<th>Technology Question:</th>
<th>Grew Up in Diverse Households</th>
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</thead>
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<tr>
<td>Where Were You on 9/11?</td>
<td>How Old Were You When You Got Your First iPhone?</td>
<td>Adults Accommodate and Consult Children</td>
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</table>

<table>
<thead>
<tr>
<th>Parental Model – Breadwinner &amp; Breadwinner</th>
<th>Self-Esteem Precedes Competence</th>
</tr>
</thead>
</table>

**Character Traits:**
- Optimistic
- Collaborative, Tolerant
- Technologically Savvy, Multi-tasking
- Socially Responsible, Multi-Cultural
- Delayed Adulthood
- Work to Live…But Seek Responsibility and Recognition
- Decision Making: Net-Educated, Networked
- Largest and Most Racially Diverse U.S. Generation
- 65% Religiously Affiliated
- 38% Have Tattoos
U.S. Life Expectancy 1900 - 2015

Source: Arias 2015; Costa 2015.
Family Demographics
Trends In The Prevalence Of Households By Type

Unmarried Couples of the Opposite Sex

NOTE: Prior to 2007, unmarried partners were counted only if one of the partners was the householder.
Median Age at First Marriage: 1890 to Present

Inter-marriage Rates

Percent of Marriages Involving Spouses of a different race/ethnicity from each other

Changing Marital Paradigm

Old Marital Paradigm: Marriage = Cornerstone**

Courtship → Marriage → Cohabitation → Children → Financial Security

New Marital Paradigm: Marriage = Capstone**

Courtship → Cohabitation → Financial Security → Children → Marriage


**"Knot Yet: The Benefits and Costs of Delayed Marriage in America" © 2013 The National Marriage Project at The University of Virginia
The Freedom to marry has long been recognized as one of the vital rights essential to the orderly pursuit of happiness by free men. Marriage is one of the “basic civil rights of man,” fundamental to our very existence and survival…¹

Rising from the most basic human needs, marriage is essential to our most profound hopes and aspirations. The centrality of marriage to the human condition makes it unsurprising that the institution as existed for millennia and across civilizations. Since the dawn of history, marriage has transformed strangers into relatives, binding families and societies together.²

Marriage as a family form is not more important or valuable than other forms of family, so the law should not give it more value.³

I suspect marriage as we have known it is not coming back.⁴

¹. Loving v. Virginia, 388 U.S. 1, 12 (1967)
⁴. Isabell V. Sawhill, “Restoring Marriage will be Difficult,” Brookings Institution (2012)
Federal Aspects of Marital Status*

- Taxation
- Inheritance and Property Rights
- Rules of Intestate Succession
- Spousal Privilege in the Law of Evidence
- Hospital Access
- Medical Decision-making Authority
- Adoption Rights
- The Rights and Benefits of Survivors
- Birth and Death Certificates
- Professional Ethics Rules
- Campaign Finance Restrictions
- Workers Compensation Benefits
- Health Insurance
- Child Custody, Support, and Visitation Rules

Changes in Family Structures
Prototypical 1950’s American Family
Costco❤️ Love
Love in Bulk

Met at Costco
1st Anniversary Date at Costco

“Kirkland Signature Brand Husband”

Costco Flower Cake

Costco Flowers

Costco Wedding Rings

Costco Shirt
"The demographic changes of the past century make it difficult to speak of an average American family. The composition of families varies greatly from household to household." Troxel v. Troxel, 530 U.S. 57, 63 (2000)
Traditionalist Family

Husband

Wife

Daughter

Son

Daughter

Grandchild

Grandchild

Grandchild

Grandchild

Grandchild

Grandchild
One out of six American children live in a blended family. Pew Research Center: 10 Demographic Trends That Are Shaping the U. S. and the World

40% of American Adults have at least one step-relative in their family
Gen X / Millennial Family

Female Spouse — Second Parent* Adoption — Female Spouse

Daughter — Second Parent* Adoption — Son

* “The phrase ‘second-parent adoption’ refers to an independent adoption whereby a child born to [or legally adopted by] one partner is adopted by his or her non-biological or non-legal second parent, with the consent of the legal parent, and without changing the latter's rights and responsibilities.” Sharon S. v. Superior Court, 73 P. 3d, 554, 558 (Cal. 2003)
1. A De Facto parent is “one who is not a child’s legal parent, but has been found by a court to have assumed on a daily basis, the role of parent, fulfilling both the child’s physical and psychological needs for care and affection, and has assumed that role for a substantial period of time.” California Rules of Court 5.502 (10) (2015)

LOS ANGELES - Bill Delaney’s two little girls spend three nights a week with their fathers, at the home Mr. Delaney shares with his husband in San Francisco. The other nights, they stay with their mothers, a lesbian couple who live nearby.

The girls have four parents -- as a result of a kind of non-traditional family arrangement that has become increasingly common. But officially, California, like most other states, recognizes no more than two legal parents.

That limit could soon be lifted.

A bill moving through the California Legislature would allow judges to recognize more than two legal parents for a given child, opening the door for alternative families to seek legal recognition of their relationships.

“There are literally scores of different families and circumstances,” Mark Leno, the State Senator who sponsored the bill, said.
Co-Parenting Arrangement

Mother

Non-Marital

Shared Custody

Father

Daughter

Son
Rachel Hope is 5-foot-9 and likes yoga, dance and martial arts. A real estate developer and freelance writer in Los Angeles, Ms. Hope, 41, is seeking a man who lives near her, is healthy and fit, and “has his financial stuff together,” she said. Parker Williams, the 42-year-old founder of QTheory, a charity auction company also in Los Angeles, would seem like a good candidate. A 6-foot-2 former model who loves animals, Mr. Williams is athletic, easygoing, compassionate and organized.

Neither Ms. Hope nor Mr. Williams is interested in a romantic liaison. But they both want a child, and they’re in serious discussions about having, and raising, one together. Never mind that Mr. Williams is gay and that the two did not know of each other’s existence until last October, when they met on Modamily.com, a Website for people looking to share parenting arrangements.
Parentage, inheritance rights, intestate succession and eligibility for Social Security survivorship benefits have been addressed, respectively, by the Uniform Parentage Act §§ 204 and 707, the Restatement (Third) of Property: Wills and Other Donative Transfers § 14.8, The Uniform Probate Code § 2 - 104 and 2-120, (2012), and the U.S. Supreme Court in Astrue v. Capato 566 U. S. 132 (2012).
A Lack of Regulation has Created Enormous Genetic Families. Now They are Searching for One Other.

Kianni Arroyo clasps 8-year-old Sophia’s hands tightly as they spin around, giggling like mad. It’s late afternoon, and there are hot dogs on the grill, bubble wands on the lawn, balls flying through the air.

The midsummer reunion in a suburb west of the city looks like any other, but these family ties can’t be described with standard labels. Instead, Arroyo, a 2-year-old waitress from Orlando, is here to meet “DNA-in-laws,” various “sister-moms” and especially people like Sophia, a cherished “donor-sibling.”

Sophia and Arroyo were both conceived with sperm from Donor #2757, a bestseller. Over the years, Donor #2757 sired at least 29 girls and 16 boys, now ages 1 to 21, living in eight states and four countries. Arroyo is on a quest to meet them all, chronicling her journey on Instagram. She has to use an Excel spreadsheet to keep them all straight.

“We have a connection. It’s hard to explain, but it’s there,” said Arroyo, an only child who is both comforted and weirded-out by her ever-expanding family tree.

Thanks to mail-away DNA tests and proliferation of online registries, people conceived with donated sperm and eggs are increasingly connecting with their genetic relatives, forming a growing community with complex relationships and unique concerns about the U.S. fertility industry. Like Arroyo, many have discovered dozens of donor siblings, with one group approaching 200 members—enormous genetic families without precedent in modern society.

Because most donations are anonymous, the resulting children often find it almost impossible to obtain crucial information. Medical journals have documented cases in which clusters of offspring have found each other while seeking treatment for the same rare genetic disease. The news is full of nightmarish headlines about sperm donors who falsified their educational backgrounds, hid illnesses or turned out to be someone other than expected -- such as a fertility clinic doctor.

And while Britain, Norway, China and other countries have passed laws limiting the number of children conceived per donor, the United States relies solely on voluntary guidelines. That has raised fears that the offspring of prolific donors could meet and fall in love without knowing they were closely related, putting their children at risk of genetic disorders.

Ariana Eunjung Cha, September 12, 2018
A Lack of Regulation has Created Enormous Genetic Families. Now They are Searching for One Other.

(continued)

Now the donor-conceived community is starting to demand more government regulation—so far with mixed results. Earlier this year, Washington and Vermont became the first states to require clinics to collect donors’ medical history and to disclose that information to any resulting child. Similar bills have been introduced in California and Rhode Island.

But last month, the Food and Drug Administration rejected a petition from a donor offspring group that sought to limit the number of births per donor, mandate reporting of donor-conceived births and require donors to provide post-conception medical updates. Peter Marks, director of the FDA’s Center for Biologics Evaluation and Research, wrote that such oversight exceeds the FDA’s mission, which is limited to screening donors for communicable diseases. An FDA spokeswoman declined to comment further.

Sean Tipton, a spokesman for the American Society for Reproductive Medicine, which represents most of the nation’s fertility clinics, said such proposals would have infringed on the right to privacy and to procreate, giving government “control over who has children with whom.”

“We think these decisions are best made by the families, not by activists and certainly not by the government,” Tipton said.

The lack of federal action has infuriated members of donor families such as Wendy Kramer, a Colorado woman who penned the FDA petition.

“There is no government agency that wants to step in to regulate or oversee the business of creating human beings,” said Kramer, whose son, Ryan, 28, has so far discovered 16 half siblings conceived with sperm from the same donor. “As wonderful as the connections are, there is an underbelly…It has really revealed how this lack of regulation has had ramifications for real families.”
A Lack of Regulation has Created Enormous Genetic Families. Now They are Searching for One Other.

Ariana Eunjung Cha, September 12, 2018
Artificial Reproductive Technology: Reproductive Variables (2018)

*Via Spindle Nuclear Transfer Technique*
Artificial Reproductive Technology

I. U. S. Statistics*

→ 231,936 ART cycles in the U. S. in 2015
  - 60,778 live births
  - 72,913 infants

→ 45,779 ART banking cycles in the U. S. in 2015
  (preserving fresh non-donor eggs or embryos for future use)

→ 1,000,000 embryos in storage in 2015

→ 1.5% of infants born in U.S. annually conceived via ART

*Centers for Disease Control ART National Data 2015
Composition of American Families*

American Families

- **35%** Traditional
  - Heterosexual
  - Married
  - Children

- **34%** Modern
  - Blended
  - Multi-generational
  - Same Sex
  - Single Parent

- **31%** Households Without Children

*United States Census Bureau “America’s Families and Living Arrangements” (2013)
Estate Planning &
Trust Management
For A
Brave New World
Demographic Changes: Strategic Issues

- Changes in Generational Attributes
- Evolution of Family Structures
- Shifting Dynamics in Family Roles and Expectations
- Dramatic Decline in Marriage
- Dramatic Increase in Life Expectancy

How and to Whom will Financial Wealth be Allocated?

How will Trusts Evolve for Modern Families?

Are There Limits to Longevity?

How will Modern Families Collaborate and Make Decisions?
How and to Whom Will Financial Wealth be Allocated?
The Health & Retirement Study

A public resource for data on aging in America since 1990

The Health and Retirement Study is a longitudinal project sponsored by the National Institute on Aging (NIA U01AG009740) and the Social Security Administration. The study director is Dr. David R. Weir of the Survey Research Center at the University of Michigan’s Institute for Social Research.
The Health & Retirement Study*

- Bi-annual survey of 20,000 Americans aged 50 and older
- Objectives:
  - Explain the antecedents and consequences of retirement
  - Examine the relationships among health, income, and wealth over time
  - Examine life cycle patterns of wealth accumulation and consumption
  - Monitor work disability
  - Examine how the mix and distribution of economic, family, and program resources affect key outcomes, including retirement, “dissaving,” health declines, and institutionalization

*National Institute on Aging and University of Michigan Institute for Social Research
Intestacy:

→ 42% of all Health & Retirement Study (HRS) respondents have no will

→ 38% of deceased HRS respondents died intestate

→ 49% of HRS respondents with stepchildren have no will

→ 59% of HRS “no-contact” parents have no will (parent who has had no contact with at least one genetic child for at least one year)

→ 62% of divorced HRS respondents have no will

## Estate Planning – Essential Questions

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<th>To Whom/To Which</th>
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<td>How Much</td>
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<td>→ Is Enough</td>
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<tr>
<td>→ Is Too Much</td>
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<td>When</td>
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<td>→ To Give</td>
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<td>→ To Discuss</td>
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<tr>
<td>In What Form</td>
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<tr>
<td>→ Outright or in Trust</td>
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<td>→ Trust Design and Attributes</td>
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<tr>
<td>Who Will Serve as our Surrogate</td>
</tr>
<tr>
<td>→ For Health Care and Financial Decisions</td>
</tr>
<tr>
<td>→ For Managing Our Assets</td>
</tr>
<tr>
<td>→ To Care for Our Families</td>
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</table>
Wealth Allocation - Equal v. Unequal Bequests

“Almost All Economic Models Predict Unequal Bequests.”

**Altruist Model:**
Parents Equalize Marginal Utilities Across Children (“Balancing the Scales”)

**Exchange Model:**
Bequests are Made in Return for Services (“Compensation for Care”)

**Evolutionary Model:**
Parents Transfer Wealth to Their Genetic (Rather than Social) Children to Maximize the Probability of Survival of Their Genes. (“Paying for Posterity”)

**Litigation Minimization Model:**
“Unequal Division of Estates Among Genetic Children Typically Generates Unease Among Trust and Estate Lawyers Because They View Unequal Bequests as Invitations to Litigation”

**Maternal Model:**
“The Vast Majority of Mothers (More than 92 Percent) Intend to Leave Equal Bequests”

Gratuitous Transfers: Freedom of Disposition

- Private Gifts
- Bequests
- Philanthropic Gifts
- Transfer Taxes

Private Wealth

Private Interests

Public Interests
Blended, Multi-Generational Family

Wife 1

Husband Traditionalist
72

Wife II Boomer
57

Son Gen. X
44

Son Gen. X
42

Daughter Gen. X
41

Daughter Millennial
25

Son Millennial
21
Entertainment for Stepchildren
Blended, Multi-Generational Estate Plan

Lifetime Wealth Transfer

- Split Annual Exclusion Gifts - $30,000 x5
- Rolling GRAT's Remainders in Equal Shares to Children
- QPRT for Vacation Compound

Testamentary Wealth Transfer

- Unused Exemption Grandchildren's Trust
- Endowment for Vacation Compound
- Marital Trust

Husband
Traditionalist

Wife II
Boomer

Son
Gen X

Son
Gen X

Daughter
Gen X

Daughter
Millennial

Son
Millennial
Wealth Transfer Planning for Contemporary Families

PRIOR GENERATIONS

Estate Planning → Mortality → Family Disclosure

CONTEMPORARY FAMILIES

Estate Planning

Family Dialogue → Plan Design and Implementation → Family Disclosure

Spouses/Partners
- Expectations
- Expectancies
- Goals

Parents/Partners and Children
- Family Views
- Expectations
- Hopes/Fears

Spouses/Partners and Children
- Plan
- Rationale
- Role of Advisors
- Concerns
Traditional Estate Planning Paradigm….Recast

- Tax Based
  - Transfer Tax Centric

- Hierarchical
  - Nuclear Family Oriented

- Culturally Homogeneous

- Predominant Focus on
  - Financial Wealth

- Goals Based
  - Tax Efficient

- Humanistic
  - Sensitive to Family Structure

- Culturally Adaptable

- Holistic Understanding of
  - Family Wealth
Traditional Trust Design and Management…Recast

Immutable Grantor Intent Beneficiary Accommodation

Hierarchical Nuclear Family Oriented

Culturally Homogeneous

Predominant Focus on Financial Wealth

Grantor Intent Flexible Beneficiary Engagement

Humanistic Sensitive to Family Structure

Culturally Adaptable

Holistic Understanding of Family Wealth
How Will Trusts Evolve for Modern Families?
How Will Trusts Navigate the Generational Divide?

GRANTORS

Traditionalists
- Respectful of Authority
- Control-Oriented Decision Making
- Work-Centered
- Culturally Homogenous
- Digital Learners

BENEFICIARIES

Gen-Xers
- Suspicious/Tolerant of Authority
- Pragmatic/Networked Decision Making
- Life-Centered
- Culturally Diverse
- Digital Natives
Material purposes are not readily to be inferred. A finding of such a purpose generally requires some showing of a particular concern or objective on the part of the settlor, such as concern with regard to a beneficiary’s management skills, judgment, or level of maturity. Thus, a court may look for some circumstantial or other evidence indicating that the trust arrangement represented to the settlor more than a method of allocating the benefits of property among multiple intended beneficiaries, or a means of offering to the beneficiaries (but not imposing on them) a particular advantage. Sometimes, of course, the very nature or design of a trust suggests its protective nature or some other material purpose.*

*Restatement (Third) of Trusts § 65, Comment d.
The Claflin Doctrine: Early termination of a trust may be allowed so long as it does not frustrate a Material Purpose of the settlor. Claflin v. Claflin (20 N.E. 454, Mass. 1889).

Restatement (Third) §65: Material Purposes are not readily to be inferred

The Uniform Trust Code requires determination of a trust’s Material Purpose for:

§111: Non-Judicial Settlement Agreements
§411: Modification or Termination by Consent
§412: Modification of Termination Because of Unanticipated Circumstances
### Trust Design: Statements of Intent*

#### Instructions to the Trustee (and Other Fiduciaries)

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<th>Letters of Wishes</th>
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<tr>
<td>- External</td>
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<tr>
<td>- Generally unenforceable (in the U.S.)</td>
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<th>Precatory Language</th>
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<td>- Internal</td>
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<tr>
<td>- Aspirational</td>
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<th>Statement of Intent: Explicit, unambiguous purpose for wealth transfer</th>
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<tr>
<td>- Language within the trust document</td>
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<tr>
<td>- Demonstrates a unique intention that is tied to the grantor’s personal history, personal values or personal properties</td>
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<tr>
<td>- Articulates a direct link between unique personal intent and the purpose of the trust</td>
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<td>- Expresses grantor’s view on modification and termination</td>
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<tr>
<td>- Provides context for the trustee’s exercise of discretionary powers</td>
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#### Public Policy Limitations

*Raymond C. Odom, The “Goal Standard” of Estate Planning (2016)*
Communications to Beneficiaries

Wills and Trusts are a Form of Personal Communication

Ethical Wills
- Memorialize and “Transfer” Family Values

Family Mission Statements
- Formalize Family Vision and Values

Statements of Intent
- Provide Context for Financial Capital Held in Trust
- Articulate Goals for Family Wealth and Beneficiaries’ Well Being
- Inform Future Generations About Family Values and Vision

Formulation of Statements of Intent
- Client Authorship
- Focus on Heritage and Legacy, Values, and Hopes
- Brevity is Best
SAMPLE PARAGRAPH

I acquired the wealth transferred into this trust at age 60 through starting a business that grew out of a personal passion. As an immigrant to this country it is essential to me that my descendants also demonstrate a lifelong commitment to economic achievement that is not available in my birth country. Therefore, this trust was created by me to serve as a financial catalyst for the personal, cultural and professional achievement of my descendants. The human need for productive personal fulfillment never retires or ends. I intend that the funds in this trust be strategically distributed throughout the entire lifetime of the designated beneficiaries. Since I have transferred substantial funds to my children outside of this trust, I intend that this trust should not be terminated prematurely to serve any alternative material purpose.
Trust Duration

Shortest Duration
Marital Trusts  Family Trusts  Special Needs Trusts  Life Estate Trusts

Longest Duration
Special Purpose Trusts  Dynasty Trusts
<table>
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<th>Trust Design: Beneficial Interests</th>
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<td>Income</td>
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<td>Discretionary Principal</td>
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<td>Unitrust or Annuity Interests</td>
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<td>Withdrawal Rights</td>
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<tr>
<td>- Staged</td>
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<td>- 5 x 5 Powers</td>
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<td>Mandatory Distributions</td>
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<td>Use of Trust Assets</td>
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<td>Powers of Appointment</td>
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<td>- Inter-Vivos</td>
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<td>- Testamentary</td>
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<tr>
<td>- Limited</td>
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<tr>
<td>- General</td>
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</table>
Discretionary Distribution Standards

Narrow

- **Ascertainable Standards**
  - Emergencies
    - Medical Needs
  - Health
    - Medical Needs and Psychological/Psychiatric care, Rehabilitation
  - Education
    - Tuition, Room & Board, Fees for College or Professional School, Grad School?
  - Support & Maintenance
    - Normal Living Expenses (housing, food, clothing, medical care)

Broad

- **Non-Ascertainable Standards**
  - Comfort
    - Best Interest & Welfare
  - Pleasure/Happiness
    - Distributions for Enjoyment, Satisfaction

- **Trustee’s Sole Discretion**

*The term “emergency” alone may not be ascertainable. See Budd v. Commissioner, 49 T.C. 468 (1968).
Spray/Sprinkle Trusts

Advantages:

• Permit Equitable (Disproportionate) Distributions

• Achieve Economies of Scale
  - Larger Range of Investment Alternatives
  - Lower Fees

• Well-Suited to Related, Minor Beneficiaries

Disadvantages:

• Potential for Conflicting Fiduciary Duties
  - Duty to Provide Information
  - Duty of Confidentiality

• Challenges with Disproportionate Distributions

• Challenges with Investments
  - Risk Tolerance
  - Tax Brackets

• Ill-Suited to Most Adult Beneficiaries
<table>
<thead>
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<td>Administration During Grantor’s Disability</td>
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<td>Determination of Disability</td>
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<td>Distribution Discretion</td>
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<td>Class Definitions: Spouse, Child, Descendant</td>
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<td>Spendthrift Clause</td>
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<td>Investment Powers: Socially Responsible Investing</td>
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<td>Notification and Accounting</td>
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<td>Trust Termination: Small Trust, Other Circumstances</td>
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</table>
Trust Design: Grantor Intent & Fiduciary Flexibility

Grantor

Trustee
- Duty of Loyalty
- Duty of Prudence
- Duty of Impartiality

Current Beneficiaries

Remainder Beneficiaries
Trust Design: Grantor Intent & Fiduciary Flexibility

Trust Design / Grantor Intent

- Allocation of Fiduciary Responsibility
- Beneficial Interests
- Discretionary Powers
- Powers of Appointment
- Trustee/Advisor Succession

Trustee

- Duty of Loyalty
- Duty of Prudence
- Duty of Impartiality

Statutory Modification Powers

- Decanting
- Merger
- Unitrust Conversion/Equitable Adjustment
- Virtual Representation/Non-Judicial Settlements

Explicit Modification Powers

- Amendment
- Decanting
- Situs Change
- Trustee Removal
- Termination
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Longevity, Disability, Mortality… Immortality?
Young Children and Older People as a Percentage of Global Population: 1950-2050

The Growth of Numbers of People with Dementia in High-income Countries and Low and Middle-income Countries: 2010-2050

Number of People with Dementia (millions)

Who Should Bear the Greatest Responsibility for the Elderly?

- Pakistan: 2 (Themselves), 77 (Their Families), 16 (The Government)
- United States: 46 (Themselves), 20 (Their Families), 24 (The Government)
- South Korea: 53 (Themselves), 10 (Their Families), 33 (The Government)
- Japan: 27 (Themselves), 33 (Their Families), 36 (The Government)
- France: 23 (Themselves), 33 (Their Families), 42 (The Government)
- Germany: 41 (Themselves), 12 (Their Families), 38 (The Government)
- United Kingdom: 39 (Themselves), 13 (Their Families), 33 (The Government)
- Indonesia: 13 (Themselves), 38 (Their Families), 24 (The Government)
- Brazil: 8 (Themselves), 42 (Their Families), 38 (The Government)
- Mexico: 11 (Themselves), 36 (Their Families), 32 (The Government)
- Nigeria: 5 (Themselves), 38 (Their Families), 40 (The Government)
- Spain: 13 (Themselves), 22 (Their Families), 55 (The Government)
- South Africa: 11 (Themselves), 23 (Their Families), 40 (The Government)
- Kenya: 9 (Themselves), 25 (Their Families), 59 (The Government)
- Argentina: 11 (Themselves), 22 (Their Families), 55 (The Government)
- Turkey: 9 (Themselves), 23 (Their Families), 42 (The Government)
- Egypt: 9 (Themselves), 22 (Their Families), 51 (The Government)
- China: 9 (Themselves), 20 (Their Families), 47 (The Government)
- Italy: 7 (Themselves), 20 (Their Families), 56 (The Government)
- Israel: 11 (Themselves), 8 (Their Families), 61 (The Government)
- Russia: 8 (Themselves), 10 (Their Families), 63 (The Government)

Source: Pew Research Center survey, March-April 2013, N=22,425 adults in 21 countries
U.S. Fertility Rates

Number of Childbirths Per Woman

Number of Childbirths Per Woman
“Grandma and Grandpa need - and deserve - an attentive, caring, interesting person with whom to interact. The only such person(s) who can be summoned into existence to meet this demand are manufactured software persons with robotic bodies, i.e., empathetic, autonomous robots with a physicality that mimics a flesh and blood person.”*

* Martine Rothblatt, Virtually Human, 67 (2014)
Boomers and Millennials: Challenging Interdependence

Because of Lower Birthrates Among Those in the Baby Boom Generation, the Resulting Decline in Available Family Caregivers May Lead to a Caregiving Perfect Storm Severely Straining Families and Public Programs as Dementia Cases Grow.*

*Aging In the 21st Century: Challenges and Opportunities for Americans, 45 (2017)
Planning For:  

The Risk of Disability

End-of-Life Issues

Closing the Gap Between Elder Intent and Outcomes

- Living Circumstances
- Medical Treatment
- End-Stage Treatment

The Role of Advance Directives

- Durable Powers of Attorney
- Living Wills
- Physician Orders for Life Sustaining Treatment (POLST’s)

The Risk of Family Conflict

- Speculation (In the Absence of Advance Directives and Discussion)
- Personal Convictions
- Misinformation

The Importance and Challenges of Family Disclosure and Discussion

- Increasing Cultural and Religious Diversity
- Increasing Diversity of Family Structures
Mortality…Immortality?

The days of our years are the threescore years and ten; and if by reason of strength they be fourscore years, yet is their strength labor and sorrow; for it is soon cut off and we fly away.

Psalm 90:10
Mortality…Immortality?

<table>
<thead>
<tr>
<th>Evangelists</th>
<th>Transhumanists</th>
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<tr>
<td>Optimists</td>
<td>Immortalists</td>
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<tr>
<td>Pessimists</td>
<td>Cryopreservations</td>
</tr>
<tr>
<td>Realists</td>
<td>Biologists, Medical Doctors</td>
</tr>
</tbody>
</table>
Transhumanism Immortality Bus
Immortalists

OBSERVATIONS

“Clearly, it is possible, through technology, to make death optional.”

“The proposition that we can live forever is obvious. It doesn’t violate the laws of physics, so we will achieve it.”

“I decided that I was just not going to die.”

OUTCOMES

Biological Immortality (Joon Yun, Aubrey deGrey)  Digital Immortality (Ray Kurzweil, Martine Rothblatt)

ORGANIZATIONS

National Academy of Medicine
SENS Research Foundation
Unity Biotechnology
Google Calico

Quotations from “Silicon Valley’s Quest to Live Forever,” The New Yorker, April 3, 2017
1. Martine Rothblatt, Chairwoman, United Therapeutics
2. Arram Sabeti, CEO Cater
3. Dave Asprey, CEO, Bulletproof
Cryopreservationists

CRYOPRESERVATION ORGANIZATIONS

ALCOR LIFE EXTENSION FOUNDATION

Not-for-Profit Founded 1972
155 Patients in Cryopreservation
Whole Body Cryopreservation - $200,000

CRIONICS INSTITUTE

Not-for-Profit Founded 1976
150 Patients in Cryostasis
Whole Body Suspension - $28,000
Cryopreservation/Revival Trusts - Some Unusual Provisions

PURPOSES

FUNDING FOR CRYOPRESERVATION, STORAGE OF DIGITAL MIND IMAGES

“During cryopreservation the Grantor will no longer be living, but the Grantor will nevertheless not be dead.”

DISTRIBUTIONS

TO THE GRANTOR’S BIONIC ANALOG VERSION (“BAV”)

“If multiple BAV’s of the grantor are restored,

- Each is entitled to discretionary distributions
- Each may live rent free in any trust property.”

TERMINATION

UPON THE GRANTOR’S REVIVAL

“Whether the grantor is revived in this world or another world.”

“Upon revival the Grantor will be considered a different legal person.”
Immortality - Realists*

“The maximum lifespan of humans is fixed and subject to natural constraints”

“We expect that the oldest person alive will be around 115 years for the foreseeable future.”

“The best hope for our species is not to extend life spans but to lengthen our years of healthy living.”

How Will Families Collaborate and Make Decisions?
<table>
<thead>
<tr>
<th>Easier</th>
<th>More Difficult</th>
<th>Most Difficult</th>
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<tbody>
<tr>
<td>Holiday, Birthday, Anniversary Plans</td>
<td>Privacy and Security Protocols</td>
<td>Family Business Employment, Compensation, Succession</td>
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<tr>
<td>Vacation Plans</td>
<td>Co-Investment Opportunities</td>
<td>Management of Shared Assets</td>
</tr>
<tr>
<td>Family Foundation Management</td>
<td>Wealth Allocation</td>
<td>Health and Life Care Decisions</td>
</tr>
</tbody>
</table>
Changing Paradigm for Family Collaboration and Governance

TRADITIONAL FAMILIES

NUCLEAR FAMILY STRUCTURE

AUTHORITY WITHIN HIERARCHY

CIRCUMSCRIBED COMMUNICATION

CULTURAL HOMOGENEITY

CONTEMPORARY FAMILIES

DIVERSE FAMILY STRUCTURES

NETWORKING, PARTICIPATION AND COLLABORATION UNDERGIRD AUTHORITY

OPEN COMMUNICATION

CULTURAL DIVERSITY
# Echoes of a Changing Wealth Dialogue

## Prior Generations:
- **Dialogue:** None
- **Pre-Mortem Expectations:** What Will I Get…and When?
- **Post-Mortem Reaction:** What Was He (She) Thinking?

## Contemporary Generations:
- **Philosophical Concerns:**
  - What Will Our Legacy Be?
  - How Much Wealth is Too Much?
- **Practical Concerns:**
  - How Will We Raise Self-Reliant/Resilient Children in Wealth?
  - When and How Should We Discuss Wealth with Children?
  - How Can We Develop Effective Family Collaboration and Governance?
  - How Can Philanthropy Contribute to Social Good and Family Well Being?
- **Tactical Concerns:**
  - How Will We Provide for:
    - Aging Parents and Dependent Children?*
    - Disabled Siblings?
  - How Should We Treat:
    - Full-Blooded Children
    - Half-Blooded Children
    - Step Children
    - ART Children
    - In-Laws
    - Non-Marital Partners

*Note: Full-Blooded Children refers to children born through biological reproduction, Half-Blooded Children refers to children born through adoption or a second marriage, Step Children are children born to a previous partner, ART Children refer to children born through assisted reproductive technologies.
Developing a Holistic Understanding of Wealth

The most difficult challenges wealthy families face are not financial, but instead they are relationship based and family based.

Charles W. Collier

Wealth in Families
Second Edition

Charles W. Collier
Harvard University
Family Wealth – Redefined*

- Charles W. Collier, Wealth in Families, Harvard University
Family Wealth In Action

Values and Vision

Family Communications & Governance

Educational, Professional & Social Endeavors

Financial and Estate Planning

Philanthropy
# Family Collaboration and Decision Making

<table>
<thead>
<tr>
<th>I</th>
<th>What’s the Issue?</th>
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<tbody>
<tr>
<td>II</td>
<td>Who’s Family?</td>
</tr>
<tr>
<td>III</td>
<td>Who’s at the Table?</td>
</tr>
<tr>
<td>IV</td>
<td>Which Table?</td>
</tr>
<tr>
<td>V</td>
<td>Who Has Decision Rights?</td>
</tr>
</tbody>
</table>
## Family Decision Making Continuum

<table>
<thead>
<tr>
<th>Study</th>
<th>Kitchen Table</th>
<th>Dining Room Table</th>
<th>Conference Table</th>
<th>Board Room</th>
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<tbody>
<tr>
<td>Parental Control</td>
<td>Family Consensus</td>
<td>Family Compact</td>
<td>Family Council</td>
<td>Governance Structures</td>
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<tr>
<td>Children’s Education</td>
<td>Social and Family Activities</td>
<td>Estate Planning</td>
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<td>Business and Entrepreneurial Endeavors,</td>
</tr>
<tr>
<td>Estate Planning for Minors</td>
<td>Rules of the Road for Family</td>
<td>Health and Life Care Issues</td>
<td>Management of Shared Lifestyle Assets</td>
<td>Asset Management</td>
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<td></td>
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<td>Foundation Management</td>
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- **Study**
  - Parental Control
  - Children’s Education
  - Estate Planning for Minors

- **Kitchen Table**
  - Family Consensus
  - Social and Family Activities
  - Rules of the Road for Family Communication
  - Values Discussions

- **Dining Room Table**
  - Family Compact
  - Estate Planning
  - Health and Life Care Issues

- **Conference Table**
  - Family Council
  - Philanthropy
  - Management of Shared Lifestyle Assets

- **Board Room**
  - Governance Structures
  - Business and Entrepreneurial Endeavors, Asset Management
  - Foundation Management
Changing Family Structures
Changing Family Structures

HERITAGE

LEGACY
Estate Planning and Trust Management for a Brave New World

We are such stuff
As dreams are made on;
And our little life
Is rounded with a sleep

Shakespeare, The Tempest, IV.i.
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