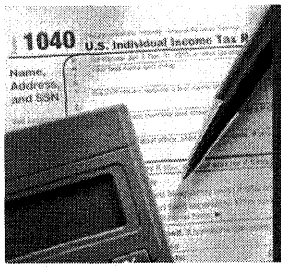

By **Stanley H. Teitelbaum** & **Martin M. Shenkman**

CV Article

Psychological Issues of Bequests

Help clients work through emotional reactions when they're considering who, when, why and how much to leave to intended heirs

In crafting an estate plan, many clients struggle with sleepless nights caused by wrenching emotional issues pertaining to their relationships with their children, their value systems, their personality issues and the effect of their own personal experience with gifts and inheritances. The history of the client's own relationship with money and the client's personal beliefs about money, what psychologists refer to as "money scripts," shape the way clients consider choices, decisions and consequences related to giving or bequeathing money to children.

Estate-planning practitioners need to understand the prominent themes that generate emotional angst for parents (and other benefactors) when they're navigating such questions as who, when, why and how much to leave to intended heirs. Many clients experience emotional pain and react with the defense mechanism of avoidance when dealing with these issues. The resistance to sorting through their concerns is partially rooted in a fear of the fuller acknowledgement of their own mortality, which engenders a significant upsurge of anxiety. These issues are complicated and not easily resolved. Moving forward on bequest decisions frequently involves a certain amount of uncertainty regarding these decisions, and the inclination becomes to put the process on hold. The active choice of dealing with the process, albeit an uncomfortable path, is superseded in these cases by the passive choice of avoidance and the familiar rationalization of "I will get back to this later."

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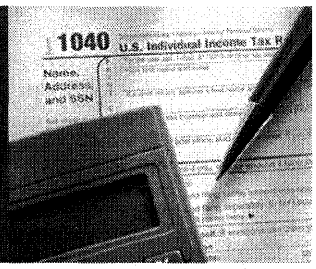
Resistance is a common scenario, and it behooves the estate-planning practitioner to work with the client in a way that empathizes and normalizes the conflict and difficulty in finalizing the process and maintains ongoing supportive contact.

The Decision Process

In many cases, both clients and advisors presume that the answer is to maximize the dollars transmitted to heirs. After all, the underlying theme of tax minimization has dominated estate planning for decades. To the extent that taxes can be reduced, bequests can be enlarged. The decision process, and the need for practitioners to take a broader role, is affected by a range of factors, including:

- With the growing use of financial forecasting in the estate-planning process, clients can ask specific "what if" questions, such as what scope of support can a child or other heir be assured of from a specific inheritance. This modeling will suggest to many parents that the financial security that they believe they're bequeathing might in fact be much less than anticipated. For example, if a parent is providing a particular child with $50,000 per year of support, will the amount that child is likely to inherit (based on financial modeling) be likely to sustain that level of support on an inflation-adjusted basis for the child's life? In some instances, the modeling might suggest that the wealth level is so substantial that the parent can provide the child with the desired level of support or standard of living with a high confidence level and leave substantial other assets that might be redirected to charitable giving or bequests to other family members. In other instances, the current level of gifts may be unsustainable for the child's lifetime.
- As clients live longer, the likelihood of a parent's



financial resources being used to support that parent's lifestyle is greater, and hence the amount the child will eventually inherit is reduced. Further, increased longevity for parents means that children may inherit at much later ages than the child anticipated. Thus, the traditional and primary wealth transmission model of testamentary transfers might warrant evaluation to determine if some portion of that future testamentary transfer can be accelerated to benefit the child at an earlier age.

- The growing sophistication of modern trusts, with the multitude of fiduciary and non-fiduciary positions (for example, general trustee, distribution trustee and trust protector) and the myriad of options (for example, quiet trusts and discretionary distributions), give today's practitioners more options to tailor a plan to meet a client's specific concerns and objectives, but all this still requires engaging clients to clearly communicate their desires and then helping clients sort through the considerations affecting the options to achieving their goals.

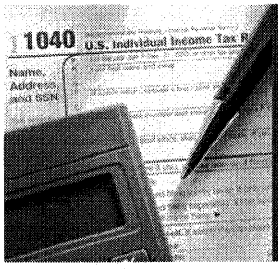
Optimal Inheritance Psychological Age

One of the biggest issues facing high-net-worth individuals and couples concerns the potential impact on children who receive a substantial inheritance at an early age. This question has been debated for decades. Many experts have taken the position that children who inherit large sums at a young age are at risk for curbing their ambition and incentive to find their own path. Financial entrepreneur T. Boone Pickens has cautioned, "if you don't watch out, you can set up a situation where a child never has the pleasure of bringing home a pay check."[1] And, the renowned investment author, John Train, argues that, "very large sums handed over to children who have done nothing to deserve them almost inevitably tend to corrupt them."[2] An article reported in *The Atlantic* magazine regarding a comprehensive study by the Boston College Center on Wealth and Philanthropy revealed extensive anxiety about the risk for heirs of "drifting" without a career or purpose.[3] Another large study reported in the *Harvard Business Review* of more than 3,000 families, aptly entitled "Keep Your Kids Out of the Entitlement Trap," indicated that when wealth is passed from one generation to the next, an astounding 70 percent of it is squandered.[4]

Others have proclaimed that parents are acting in a financially withholding manner if they don't plan for their heirs to receive an inheritance at a relatively young age, for example, 21. Recent research studies in neuroscience have helped to clarify this issue. The studies confirm that the human brain isn't fully developed until the age of 25.[5] Furthermore, the last part of the brain to fully develop is the prefrontal cortex, which is central in regulating judgment, forethought, impulse control and the capacity to learn from mistakes. This lag in brain development explains why adolescents are known to sometimes use poor judgment and can be prone to being impulsive in their decision-making process. Therefore, some young legal adults (ages 18 to early 20s) may make riskier decisions than those in their mid-to-late 20s, due to their not yet fully developed brain. With regard to estate planning, an important implication from these findings is that it's generally wiser to designate 25 as the earliest age for an inheritance to be made available.

> Many parents have a certain amount of ambivalence and unresolved conflict that they feel toward each of their offspring (albeit in different ways), which colors and influences how they shape their estate plan.

In the context of modern trust planning, which tends



to hold assets in long-term trusts, the historic issue of at what age to distribute assets to the child/heir may translate to perhaps an age at which the child is named a co-trustee with rights to make a distribution to himself. This too must be tempered by the need to limit a beneficiary/heir to making distributions to himself by a health, education, maintenance and support (HEMS) standard to avoid those funds being included in the child/trustee's estate.

Fair vs. Equal Distribution Dilemma

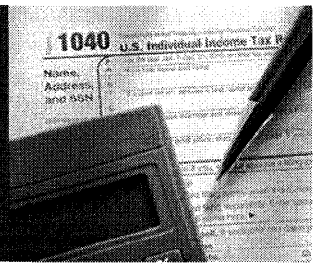
In thinking about specifics of an estate-planning distribution pattern, many families struggle over the fair versus equal dilemma in leaving money to their children (or other heirs). In grappling with this issue, clients frequently face a common dilemma of one child being much more successful than another, or perhaps one child with more difficult challenges then the other children (for example, physical or psychological problems). It's often emotionally tormenting in these situations for parents to determine whether to bequeath equal or different amounts of an inheritance. There's no one solution to this concern, but taking the tough road of dealing with it, rather than the path of avoidance, will usually pave the way for parents to find the answer that's most comfortable for them.

> If a client reaches a deliberate conclusion to use a non-equal dispositive scheme, practitioners can still discuss ways that that result might be achieved with less family disharmony.

Many parents have a certain amount of ambivalence and unresolved conflict that they feel toward each of their offspring (albeit in different ways), which colors and influences how they shape their estate plan. These parents may feel guilty about harboring such ambivalence, but it's totally normal. Creating an estate plan without sifting through some complicated and difficult issues involved in leaving assets to children is the exception rather than the rule.

Example: A widow has a son and a daughter who are both in their 40s, married and financially sound. The widow was considering leaving equal amounts of her estate to each child, but she repeatedly created barriers to finalizing her estate plan. Although she believed that she loved her children equally, she had strongly disliked her son's choice of a partner and, for many years, she'd endured a very contentious relationship with her daughter-in-law. She was plagued by the scenario that her son might die before his wife and that his wife, whom she detested, would inherit her money. Being treated unfairly and feeling taken advantage of were prominent themes in the widow's personal background, so this issue became powerfully charged for her when dealing with her estate plan.

The obvious answer to an estate-planning practitioner is for the widow to bequeath assets to her son in trust, so that on her son's death, her daughter-in-law wouldn't inherit. But, this solution often isn't obvious to the client, and even if the client is aware of the "trust option," the details and ramifications of a trust may still leave many open concerns. If the widow's son dies, won't the daughter-in-law nonetheless benefit indirectly through payments to or for the benefit of the grandchildren? If the son is named a beneficiary, might he not withdraw excess funds to transfer them to his wife? How can the widow be assured that the trust won't be pierced if the son divorces? From the perspective of many clients, there may be no perfect solutions to these concerns. It's not uncommon for clients to spend sleepless nights agonizing over these and related issues. This angst will frequently keep the client from meeting with her estate planner to even understand the options and safeguards that might be possible. While the widow loved her son, it was important to her self-image that he reciprocated by showing unconditional love toward her. Her biggest fear was that he would be angry with her if she didn't direct an equal inheritance to each of him and his sister.



The widow addressed her struggles with her psychologist. After a number of counseling sessions, she came to the conclusion that her own peace of mind was more important than her son's approval. This decision was a giant step in her personal development. It reflected her growing ability to function autonomously, relying on her own guidelines, without worrying about how it would look to the world. Historically, her sense of well being had been excessively determined by reliance on the approval of others. In this way, she'd identified with her own mother, who'd been selfless in always putting family members' needs before her own. The widow's solution was to leave one half of her estate to her daughter and the other half to a trust set up for her son's children. She realized that this would almost assuredly induce resentment by her son and create incredible disharmony between her children. However, the power of her psychological history made this the most acceptable resolution for her. When the widow met with her estate planner to implement the plan, the planner pointed out the potential for significant family disharmony. The planner suggested another option: Create a trust for the son and all of his descendants, name an independent institutional trustee and incorporate language suggesting that the children and descendants be favored in the distributions. This approach would leave open the possibility of at least providing a safety net for the son in the event of an emergency. Another option might be to name a trusted friend as a trust protector with the power to replace the institutional trustee with a family trustee if the circumstances later warranted. This option might provide further flexibility to address the possibility of the relationship changing without the widow having an opportunity to update the plan. The client hadn't been aware of these options, and she was able to use them to reconfigure a solution in a way that allowed her to accomplish her goal while reducing the potential for blood wars between her children.

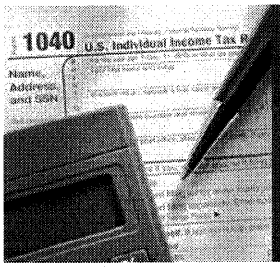
If a client reaches a deliberate conclusion to use a non-equal dispositive scheme, practitioners can still discuss ways that such a result might be achieved with less family disharmony. For example, if the client wishes to favor her daughter over her son, perhaps lifetime transfers or non-probate assets (for example, an irrevocable life insurance trust solely to benefit the daughter) can be used. In that way, the client can effectuate her intended distribution plan but the will can nonetheless provide for equal distributions, thereby minimizing the potential disruption in the family relationships.

Practitioners should inquire as to how much thought clients have given to these distribution matters. If the clients have merely thought in general terms about their wishes in regard to unequal distributions, then practitioners should engage the client in a meaningful discussion of the consequences of an unequal distribution. If the client hasn't dealt with this in a deliberate matter, perhaps the practitioner should inquire as to whether the client is desirous of pursing therapy regarding the issue. If not, then the practitioner should engage the client in further discussions to be certain that the client has in fact considered the likely ramifications of the intended dispositive scheme. Too often, clients arrive in the estate-planning attorney's office after an argument or other event and make a decision that has significant family consequences based on an emotional reaction to the event and without meaningful deliberation.

> When the clients have made thoughtful decisions, it's important that they not allow others, with their own agendas, to influence them.

Guilt Management

Parents who divide their estates unequally among their children sometimes have to confront and work through the guilt feelings attached to their decision. This guilt is often related to the expectation and fear that the child who receives less won't accept or approve their choice. To the extent that the parents have carefully thought through their decisions and believe that the reasons are sound for the unequal division of assets, it might be wise for them to stand by their decisions, even in the face of disagreement. Feelings of guilt are valid when the clients have done something wrong or bad. Irrational guilt occurs when the clients' own beliefs are shaken



by the wishes of others, such as children. When clients have made thoughtful decisions, it's important that they not allow others, with their own agendas, to influence them. Self-approval and self-acceptance should supersede the need for approval from others. Parents who struggle with this issue may be mired in residue from their own personal history, in which love was conditional and based on "doing the right thing" or pleasing the wishes of their own parents, and they may be repeating and displacing an original family dynamic onto their relationships with their offspring. Recognizing how unresolved past family history can color the shaping of current decisions can be liberating and allows the client to overcome irrational guilt feelings.

Many parents feel neglected, unappreciated or disrespected by their adult children and are tempted to use their estate plan as a weapon to convey a final statement of disappointment toward their children.

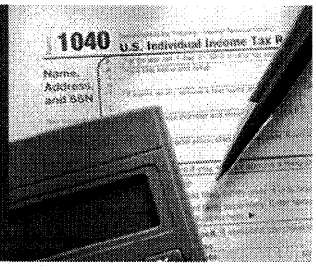
Control Issues

For a client to relinquish what she views as her hard-earned wealth is a difficult step. To reach the decision to bequeath assets to children with no strings attached can be a daunting process. It's natural to want to know that heirs will use their inheritance wisely and in ways that the client would endorse. We yearn to find a kind of immortality through what we pass on to our heirs, a symbolic version of living on after death. It's a comfort to many clients to believe that their children will be mindful of their values and wishes when they spend the money left to them. But, even with trusts, there can generally be no assurances that the children will spend the money in accordance with the client's wishes. While trusts can be crafted with whatever details and specifics as to investments, disbursements and other criteria the client wants, practitioners well know the challenges of drafting such provisions and the greater challenges of specific instructions withstanding the passage of time and the realities of trust administration. When clients bequeath an inheritance to their heirs, it's essentially an act of love, and it needs to be done unconditionally. Even when a trust structure is used to establish parameters and controls on that inheritance, from the clients' perspective, the decision should nonetheless be made unconditionally. "Letting go" means the client needs to trust that out of respect for her, her children will respect her value system when dealing with their inheritance, while at the same time having some freedom to use the assets in ways that are consistent with their own personality and their own relationship to money. A well implemented trust plan should facilitate all of this.

Marital Conflicts

Another frequently encountered issue is marital disharmony when spouses have different points of view or preferences in leaving money to their children. Each parent often has a unique relationship with each child, which is different from the spouse's corresponding relationship. The quality and history of each relationship may influence choices and decisions in estate planning and often leads to stalemates. A common example is when one spouse with greater ambivalence toward a child wants to leave assets to grandchildren, while the other spouse wants to leave assets directly to a child.

Example: John and Liz Baker were in a long-standing stalemate over the terms of leaving their substantial assets to their son David, an only child, who was a prosperous medical doctor. Historically, Liz had an extremely close bond with David, whose sharp wit and love of music were qualities that she admired in him, but found lacking in her husband. She doted on David and shared special moments in his academic development, such as co-writing his admission essays for college and medical school. Their closeness created a strong resentment in John, which he never expressed directly. John maintained a respectful but distant emotional attachment to David. David married, moved away and had



two children, one of whom was on the high end of the autism spectrum. Both John and Liz had negative feelings toward their daughter-in-law, who consistently limited the involvement between them and David. Nevertheless, Liz wanted to leave their entire estate to David, while John, who loved David but also resented David for replacing him in the affections of Liz, wanted to leave their inheritance primarily to the grandchildren. It took several counseling sessions to unravel the underlying family dynamics that were influencing their estate-planning choices before they could work together to map out a more mutually acceptable approach to their dilemma.

Parents Who Feel Mistreated

Many parents feel neglected, unappreciated or disrespected by their adult children and are tempted to use their estate plan as a weapon to convey a final statement of disappointment toward their children. When the scars run very deep, some parents feel justified in being ungenerous toward their heirs.

Example: The actress, Joan Crawford, is known to have been a very controlling parent who expected her children to lead their lives according to her standards. According to her daughter, Christina, who demonized Joan in her best seller, *Mommie Dearest*,[6] there was little room for Joan's four adopted children to express autonomy or rebelliousness. Constant friction prevailed in their household. Joan in turn felt disrespected by her heirs, and she expressed her resentment and anger by disinheriting two of her four children from her $2 million estate and righteously citing in her will, "for reasons which are well known to them." Furthermore, she left a paltry amount of $77,500 to each of her other two children. It's likely that the magnitude of her narcissistic injury over not being given the due she felt she deserved prompted her to take this ungenerous stand of retaliation against her childrens' defiant behavior and failure to live up to her standards.

The Joan Crawford saga is an extreme example of a celebrity who acted out her rage toward her children by punitively disinheriting them. It's in the normal range of reactions for clients to have residual hurts and resentments in their relationships with adult children, but the ongoing loving feelings often serve as a sufficient deterrent from a solution of disinheriting them. Parents who find themselves leaning in that direction frequently find it useful to have some professional counseling sessions to more fully understand the scope of the family dynamics before finalizing such an estate plan.

Endnotes

1. *Fortune Magazine* (Sept. 29, 1986).
2. *Ibid.*
3. Graeme Wood, "Secret Fears of the Super-Rich," *The Atlantic* (April 2011).
4. Josh Baron and Rob Lichenauer, "Keep Your Kids Out of the Entitlement Trap," *Harvard Business Review* (Feb. 18, 2014).
5. "Maturation of the Prefrontal Cortex," U.S. Department of Health and Human Services; Sandra Aamodt, "Welcome to Your Child's Brain," *Bloomsbury USA* (2012).
6. Christina Crawford, *Mommie Dearest* (William Morrow, New York, 1978).