Overcoming estate planning hurdles

Over the next three decades, more than $30 trillion in wealth will shift from one generation to the next as aging baby boomers pass on their legacies to children. Unfortunately, the reality is that most people are not prepared for this generational transfer. Statistical studies show that 55% of Americans do not have a will or estate plan, according to LexisNexis. Moreover, one in four people who said they’re in charge of handling estate plans, admit they’re not doing a good job of preparing for the unexpected.

The reasons people fail to plan vary. Some avoid legacy planning as they are uncomfortable talking about it, while others feel it’s too complicated and time-consuming. But the risks of not having a plan in place are very real. Misguided health care choices, probate delays, overpayment of estate tax, court-appointed custody of minors — all are common consequences of having no estate plan. Above all, the lack of an estate plan often leads to disagreements among heirs and can split families apart.

In this white paper, we explore how Americans are preparing for the transfer of their accumulated wealth to the next generation, and provide 5 actionable steps individuals and families can take to ensure a smooth and successful transition.

A seismic shift

For more than 50 years, the baby boom generation, or those born between 1946 and 1964, has defined the trends that shape our society and economy. And now, it’s doing it again as it begins to pass the baton to the next generation. The estimated $30 trillion in financial and nonfinancial assets that baby boomers are expected to transfer to heirs by 2051 dwarfs the previous generational transfer of approximately $12 trillion.

This shift has already begun. It is estimated that almost $1 trillion in assets changed hands between 2011 and 2016. But the bigger shift is expected to occur between 2028 and 2048. At its peak between 2031 and 2045, 10% of total wealth in the United States will be changing hands every five years.
This record transfer of assets is significant for estate planners, financial advisors, and their clients who must liquidate and reinvest entire estates. Historically, this represents a critical time, when old assets are liquidated and new investment priorities must be established. This is also a time when legacies can be especially vulnerable to poor decisions and mismanagement.

But the generational transfer is about more than just money. It is about passing down values and ways of life, and ensuring continuity among multiple generations.

**Are you and your children prepared?**

Recent research shows us that a large number of Americans are falling behind when it comes to generational planning. This is clear when you look at the following findings:

- 69% of people have seriously considered drafting a will but have not followed through.²
- Only 20% to 30% of Americans report having an advance directive such as a living will.³
- Over 50% of those age 50 and older have not discussed estate planning with their adult children, and 70% of those age 25 and older have never had an in-depth discussion with their parents about their estate planning objectives.⁴
- 25% of people who say they’re in charge of their family’s estate planning admit that they aren’t doing a good job of preparing for the unexpected.²

When asked why they did not have a will in place, respondents stated:

- 57% procrastination
- 22% don’t feel it’s urgent
- 17% don’t feel the need
- 14% don’t want to think about death
What’s your excuse?

People point to a variety of different reasons for putting off, or avoiding, estate planning. According to recent surveys, the primary excuses people give are:

**I am uncomfortable talking about legacy planning.** Estate planning, like buying life insurance, brings up the specter of death. Many people shy away from discussing money matters or mortality with children or heirs. And many subconsciously rationalize that by postponing estate planning, they are postponing death. But the price of avoiding such discussions can be high.

**My family situation is complex.** You may be divorced, remarried with children from another marriage, or have conflicts with your children or other family members that make estate planning difficult. But this makes a plan all the more important. With many potential benefactors and conflicting interests, the lack of planning can be a recipe for challenges and lawsuits.

**My children are too young.** Having a custody plan in place is a requisite for any parent. But many delay creating a comprehensive estate plan until children are older, and delay sharing it with them until they are adults. Yet establishing a plan and communicating it early with heirs is a proven key to a successful generational transfer. When children are adequately prepared, they become good stewards of what they have been given.

**The estate planning process is too complicated and time-consuming.** Estate plans vary widely in their complexity, depending upon specific circumstances. A “plan” can be as simple as a will and durable power of attorney, and as complex as a full-blown family trust. However, most are relatively simple and take little time to put in place.

**The risks of not planning**

When someone dies with no will or estate plan, their family faces a potentially lengthy settlement process administered by a court. The court decides on the disposition of assets and custody of minor children. The court appoints an executor, who may be a complete stranger to the family. The court accounts for and liquidates all personal items, regardless of sentimental value. Settlement can take a year or longer, even for simple estates, due to the probate process and crowded court dockets. There is also no assurance that family members will be fairly provided for, or that the wishes of the deceased will be met. Additionally, there are a number of other risks, including:

**No control of end-of-life decisions**

People without a durable power of attorney and a health care directive face the risk that their affairs could be mismanaged if they are incapacitated, or that critical health care decisions may not agree with their wishes. Consider the case of a widow with no children who suffers a stroke that renders her unable to manage her affairs. Who will pay the bills?

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**ESTATE PLANNING ELEMENTS DEFINED**

**Will**
Specifies who will receive your property upon your death. It also appoints a legal representative, called an “executor” or “personal representative,” to carry out your wishes, as well as a guardian for minors or dependent children. A will covers only probate property.

**Power of Attorney**
Allows you to appoint another person — your “attorney-in-fact” — to step in and manage your financial affairs if and when you ever become incapacitated.

**Medical directive, health care proxy, or living will**
These documents do different things, but each serves to assure that medical decisions are correctly made, by the appropriate individuals and in conformance with your wishes, in case you are incapacitated and unable to make such decisions yourself.

**Irrevocable trust**
A trust whereby the original creator no longer has “control of dominion” over the assets in the trust. The person creating this type of trust cannot be named as the trustee. This is a common strategy for tax-saving purposes.

**Living trust**
A revocable trust that is created to hold the grantor’s assets so that, upon death they are distributed quickly without probate. A living trust offers more confidentiality and is generally harder to contest than a simple will.
Who will make important end-of-life decisions? A durable power of attorney and health care directive help ensure that the appropriate person makes the right decisions.

**Unsuitable custody**

Parents who have young children, or a grown child with special needs, typically name someone in their will to serve as the legal guardian. Without this provision, a court must decide who has legal custody. If married, the responsibility typically goes to the surviving spouse. But what if there is no close relative? And what if both parents are lost? Those who have custody of minors and die without a will run the risk that their children could be placed in unsuitable homes, against their wishes.

**Lengthy settlement**

The timing of an estate’s settlement depends on its size and complexity, as well as its legal structure and the probate process. Simple estates with plans in place can take a few months, while complex estates with disputes can take years. If a person dies without a will, the estate typically faces a lengthy and potentially costly probate process which varies from state to state. Proper planning and use of structures like a living trust can help beneficiaries bypass probate and significantly speed up the settlement process.

**Taxes**

Although the first $5.45 million of an estate currently is not subject to the federal estate tax, different states may impose their own so-called “death taxes.” Moreover, the estate tax exemption has changed significantly — from as low as $2 million just eight years ago to over $5 million today — and there is no guarantee it will not change in the future.

For larger estates, there are different strategies and structures that can significantly reduce estate taxes, which currently run as high as 40%. For example, a properly structured trust can establish the framework for the transfer of assets to multiple generations, and provide guidelines and incentives for heirs.

**Mismanagement**

There is also the risk that assets may lose value through mismanagement of the transfer process. One study shows that there is a 70% failure rate when transferring family wealth from one generation to another — a loss of control of assets through mismanagement, poor investments or the like. A well-thought-out plan can anticipate the transfer and reduce the chances of a loss in value.

**Beneficiary disparities**

A will can differ from beneficiary designations, which indicate who is the beneficiary of certain accounts. For instance, a will may specify that an estate be evenly split between two heirs. But if the decedent’s principal assets happen to be in joint accounts or in accounts with only one heir named as the beneficiary, the other could lose out. A well-designed estate plan will address such potential disagreements and make sure that the estate is distributed according to the benefactor’s wishes.

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“*When your children are adequately prepared, they will become good stewards of what they have been given.*”

~ Carlee Harmonson
Managing Director
MUFG Union Bank, N.A.
Disputes

Any estate may be vulnerable to disagreements among heirs, resulting in costly lawsuits and family schisms. But those with no plan in place face a greater likelihood that someone will be unhappy with the division of property or challenge its disposition. Advanced planning that involves the decedent, family, heirs, and other affected parties can significantly reduce this risk.

Take Action: 5 steps to help you prepare

For those who have put off estate planning, there are a number of steps that can be taken by parents and children to start the process and help ensure a swift and smooth transition to the next generation.

Inheriting a legacy comes with certain consequences and responsibilities that many heirs may be unprepared for. A son or daughter in line to run a family business may not know exactly what that involves. A young adult receiving a large cash windfall may have no idea how to manage his or her newfound wealth, or may be unable to deal with potential life changes. Heirs may need guidance well in advance if there is to be a smooth transition.

1 Start early

Carlee Harmonson, senior vice president and personal trust regional director for The Private Bank at Union Bank, recommends that parents talk to children as early as possible so they have the emotional and financial tools to deal with their new wealth. “Waiting too long to share information about an eventual inheritance can create its own issues. Children can end up confused and angry that they were not trusted with the information and then find themselves unprepared for wealth. Often, the inheritance comes at a time when they have already made significant life choices such as which college to attend, a profession, and even whom to marry — choices that may have been made differently with knowledge of future financial security.”

Harmonson recommends preparing children by instilling values at an early age — paying them an allowance, teaching them to save up for purchases, and introducing the concepts of using, investing, and giving away portions of their money early on. As they grow older, introduce them to more sophisticated concepts such as compounding and risk. Once they enter high school, begin discussing the inheritance with them, but make it less about the dollar amount they are going to receive and more about what they can accomplish with the money. Discuss the difference between long- and short-term goals and introduce them to various financial advisors to further develop their understanding of wealth concepts and increase their comfort in working with experts.

“We have already begun one of the greatest tidal waves of wealth transfer in the history of the world. Wealth transfer can be complex and our team is in a unique position to make clients more secure in achieving their goals.”

~ Jason P. Liu
Managing Director
Head of Wealth Planning
MUFG Union Bank, N.A.
**Engage and share**

In their book, *Preparing Heirs: Five Steps to a Successful Transition of Family Wealth and Values*, Roy Williams and Vic Preisser blame a breakdown in family trust and communication for most estate transfer failures. To prepare heirs, they suggest engaging them in open communication and shared decision-making. Introduce them to your circle of advisors and mentors. Give them a financial context for their inheritance. Foster a culture of achievement and independence. Encourage and celebrate successes. By the time they inherit, your heirs will have a mature, healthy attitude toward money that will serve them well.7

In the case of a family business, it’s important to make clear what the role of successors will be. Don’t assume your heirs will want to take on the business; ask them directly. Establish a clear plan of what happens when, and what happens to family members who may be owners without being managers. The earlier you plan, the better chance you’ll have of avoiding conflicts.

**Have a family meeting**

Successful multi-generational planning begins with an open dialogue, in which parents and children can share their visions for the family. Ideally, this takes place at a group meeting with all family members present. This can be at a holiday get-together or during a family vacation, or whenever the entire family is present.

For parents who already have a plan in place, this is a good opportunity to make sure everyone is aware that a plan exists and that all are comfortable with its terms. If not, now is the time to broach the topic. Make sure to involve all family members and to emphasize that this is for the good of both parents and children. Make known the location of important financial and legal documents, what each heir can expect in the will, and what roles they may play in future management of the estate.

For children looking to start the process, never go behind the backs of siblings to assist parents in their estate planning. Instead, work with other family members. It may also be helpful to have a trusted advisor at this family meeting to help ensure an atmosphere of impartiality.

**Discuss personal property wishes**

One of the most contentious aspects of settling an estate can be the distribution of personal property, family heirlooms, and articles with sentimental value. Misunderstandings about who gets what can sour family relationships and lay the foundation for lawsuits.

Who will get dad’s watch? What about mom’s silver or the family portrait? Such items may not have great monetary value, but could hold significant sentimental value to certain heirs. It helps to have frank conversations well in advance to determine different heirs’ preferences for different items. When interest in a particular item is expressed, take note of it. As with other elements of generational planning, the more open the dialogue, the better.

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**How a well-structured estate plan can potentially reduce or eliminate estate tax**

With several homes and varied investments, Carlos and Anna have assets well in excess of the $5.45 million federal estate tax exemption. They seek ways to maximize their legacy to heirs while minimizing taxes. Their estate plan calls for a two-pronged strategy: reducing their taxable estate through gifting and placing their assets in a trust. By gifting to children and grandchildren, they can reduce their taxable estate by over $800,000 by the time they retire. By establishing a credit shelter trust or taking advantage of federal portability features, they can fully realize each spouse’s exclusion, enabling a couple to pass on an additional $10.9 million to heirs free of estate tax.
Seek the help of a professional

Multi-generation planning can be complex. Once you’ve had an initial conversation within the family, you will want to involve a lawyer, estate planner, or wealth strategist who can work with you to put a plan in place that addresses your needs and concerns. A wealth strategist can also suggest tax and gifting strategies, and other ways to make the transition go smoothly and efficiently.

Your financial partner for life

Whether you’re the steward of family assets or want to protect the wealth you worked hard to build, The Private Bank can help. We are dedicated to helping our clients fulfill the ambitions they have for their wealth so they can focus on living more fulfilling lives. Drawing on a tradition of excellence, personalized service, discretion and respected investment experience, our teams offer specialized financial services to meet all of your needs — including banking and investment management services,* specialty asset management, and trust administration services — no matter how complex.

HAVING THE CONVERSATION
Tips on how to initiate an estate planning discussion with parents or children

Discussions about estate planning can be difficult. Many parents are reluctant to bring up the issue because they feel uncomfortable discussing money with their children. Parents with memory loss may be particularly sensitive. Likewise, children avoid initiating a conversation about their parents’ estate plan, fearing it could be viewed as a mercenary grab for cash. And no one likes talking about mortality. But having an open discussion is crucial to establishing a plan that will address the wishes and needs of both parents and children.

WITH PARENTS

• Approach the discussion with sensitivity and a respect for parents’ privacy.
• Frame it within the context of long-term plans and preparing for the future.
• If you have children, stress the need for multi-generational planning.
• Let parents know you understand that the property and money is theirs and not yours.
• Emphasize that advance planning ultimately keeps them in control of how their assets are to be spent and/or distributed.
• De-emphasize money. It’s about making sure their wishes are met, and that family customs and traditions are maintained.

WITH CHILDREN

• Determine the goals and objectives you want to achieve beforehand.
• Approach children and other heirs when all together, not individually.
• Take a long-term view. It’s not about parents or kids, or even kids’ kids. It’s about a multi-generation legacy.
• Ask for input and feedback. Encourage open discussion.
• Make sure all have their say.

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- Are subject to investment risks, including the possible loss of principal invested.

1 Source: Accenture, The “Greater” wealth transfer: Capitalizing on the intergenerational shift in wealth, 2015.
4 Source: Center for Elder Law and Estate Planning, Adult children should encourage their parents to have an estate plan, retrieved April, 2016. Based on a study by Merrill Lynch.
6 Source: Forbes, Wealth Transfers: How to Reverse the 70% Failure Rate, December 9, 2011. Based on a survey conducted by Vic Preisser and Roy Williams.

Wills, trusts, foundations and wealth-planning strategies have legal, tax, accounting and other implications. Clients should consult a legal or tax advisor.