BERNSTEIN

WHERE THERE'S A WILL, THERE'S A WAY:

THE PURPOSEFUL ESTATE PLAN

This paper is part of a series discussing family governance. Please find the main piece, "Ties That Bind: How Sound Governance Supports Family Success" here.

INTRODUCTION

Wealth can be a blessing for a multigenerational family. Affluence provides the opportunity to experience comfort and freedom while uplifting other communities. But without a solid plan, a family could witness its financial assets dwindle and even disappear as it hands down wealth to subsequent generations. The typical estate plan focuses on administration, tax considerations, and proper legal documents, among other considerations. But a family's overall relationship to wealth can be improved when traditional estate planning includes governance structures that address the emotional impact of inheriting wealth, too.

This paper will review traditional estate planning and governance's role in going beyond familiar constructs. We will also highlight how governance structures can enhance an estate plan by addressing family dynamics and other interpersonal aspects that traditional plans tend to overlook.

GOING BEYOND TRADITIONAL ESTATE PLANNING

Among many other goals, conventional estate planning seeks to minimize taxes, ensure possessions are distributed as the wealth creator desires, and provide a mechanism for making crucial decisions if the wealth creator becomes incapacitated. Individuals and families typically go through this process with the assistance of accounting, legal, and financial professionals using documents such as a will, a revocable trust, and powers of attorney for property and health care. These documents often consider each family's distinct circumstances and personalities. Still, they may not go as far as a sound governance structure to address family values, resolve or prevent conflict, and provide an opportunity for personal growth.

Transferring wealth from one generation to the next in a tax-efficient manner, protecting assets, and establishing a system to administer heirs' assets is only the beginning of the planning process. Even the most well-crafted estate plan can fall short if it fails to address a family's beliefs and values and if prospective heirs remain unprepared to receive an inheritance.

EXECUTIVE SUMMARY

- **A "purposeful" plan integrates governance structures into an estate plan and can help prepare future inheritors to receive wealth, make joint decisions, and avoid unnecessary disagreements.**
- **Working together to employ governance components that are tailored to a family's unique composition and level of wealth can enrich an estate plan by enhancing cohesion among family members.**
- **Establishing an open forum to articulate shared family values and discuss estate planning decisions may increase the likelihood of accomplishing the wealth creator's objectives.**
- **Involving the right team of advisors—such as tax professionals, estate planners, financial advisors, and others—can ensure that a family's estate plans reflect their values and wishes.**

ENHANCING TRADITIONAL ESTATE PLANNING THROUGH FAMILY GOVERNANCE

Governance addresses a family's values, skills, and life experiences. It helps ensure there is a strong yet flexible framework for unified decision-making and communication that can span generations. An estate plan that is aligned with governance becomes "purposeful" and often includes the following elements:

- A shared family purpose and legacy;
- A set of values and beliefs that can inspire the next generation;
- A forum for communication among family members; and
- A well-defined plan to educate and prepare future heirs.

DEVELOPING A SHARED PURPOSE AND LEGACY FOR THE FAMILY

Estate plans should be purpose-driven and tailored to the family. Values-focused planning should start with vision setting and defining intentions followed by deciding how family wealth can support these goals. Proactively committing to this step can help families stay aligned and direct the use, growth, and sharing of assets while preventing unintended erosion.

ARTICULATING SHARED FAMILY VALUES

Shared values are unique to each family. A governance plan that harmonizes a family's values with its estate plan can help mitigate the risk of future legal battles among heirs and the resulting deterioration in relationships among family members.

Family values that have been imparted through stories, life lessons, and family possessions can also help create a successful legacy. By including information from family memoirs, video, and audio recordings into an estate plan, cherished mementos can be passed on to succeeding generations. While a trustee or executor manages financial assets when a family member passes away, family stories and lessons have no steward or protector.

ETHICAL WILL

"The hardest, yet most rewarding, part of the planning process is asking essential questions about what people want to preserve—besides financial wealth—and how they can enhance each family member's growth."*

An increasing number of families are writing legacy letters, or ethical wills, to convey the ideas, principles, and values that inspired them to the people they care about most. An ethical will can be helpful to everyone, regardless of wealth level. It is a non-legally binding document that leaves a values-based and spiritual—rather than material—legacy to loved ones. The main objectives are to articulate personal and family values, honor family history, and preserve stories, while sharing hopes and dreams for the future. Ethical wills can take many forms, and there is no standard template to follow. Some choose a letter format, and others may write an autobiographical narrative. When drafting such a letter or will, wealth creators should reflect on the past, consider the present, and contemplate the future.

Deciding when to share a letter or will with family is a personal decision. If the intent is to share with family after the author passes away, it should be kept with other legal papers, or its location should be mentioned in other estate planning documents.

ESTABLISHING AN OPEN COMMUNICATION FORUM AMONG FAMILY MEMBERS

Some families avoid discussing estate planning because they don't want their children or grandchildren to know their wealth level, and they fear it may discourage future heirs from achieving independent success.

With proper communication, though, families can improve the likelihood that their children and grandchildren will have better relationships resulting from their estate plans. Open forums of communication allow for sharing perspectives, exploring options, and appreciating one another's needs and concerns. They also allow for sharing core values with prospective heirs, preparing them to use the family wealth responsibly and purposefully.

Effective communication can also minimize conflicts that may arise when family members remain uninformed. Even if a family chooses not to provide all the details, prospective heirs are more likely to work to achieve the wealth creator's objectives if they understand the framework for how they will receive an inheritance and the reasoning behind key planning decisions.

EDUCATING AND PREPARING PROSPECTIVE HEIRS

Often, families do not prioritize educating the next generation. But proactively addressing education can help younger family members understand how to steward wealth and fully appreciate the immense responsibilities of taking a leadership role in the family. Giving younger family members insight into the decision-making process will also help them feel invested in maintaining the family's shared goals and values. Otherwise, a family's legacy could descend into a litany of petty quarrels, litigation, and reckless spending. The ability to generate wealth may not be transferrable to those who have never created a fortune for themselves. But through education and experience, prospective heirs can understand what it takes to preserve and grow assets they've inherited and perhaps create additional wealth in the future.

HOW DO GOVERNANCE STRUCTURES DRIVE "PURPOSEFUL" PLANNING?

Governance structures that evolve over time can help families develop and refine an estate plan that encourages stewardship of both family and wealth. The key elements of governance are listed below.

*Collier, Charles (2012, third edition). Wealth in Families. President and Fellows of Harvard College.

MISSION STATEMENT

Writing a family mission statement is the perfect way for a family to establish a powerful foundation that outlines shared values, determines a family's identity, and reinforces what is important. By articulating the family's purpose, the mission statement will offer a framework to help families practice deploying their wealth—while also teaching children how to use it in ways that are consistent with their values. The mission statement can create a structure for managing and making decisions about the family's wealth and charitable giving. In an ideal world, the family's overall estate plan will reflect the mission statement.

FAMILY CONSTITUTION

Over time, some families struggle to establish guidelines for navigating wealth and business transitions. As families evolve and successive generations wish to contribute to the family's wealth, business, and philanthropy, building on an existing mission statement and creating a family constitution often proves beneficial. A family constitution serves as an overarching document that includes all the agreements, policies, and expectations that govern family interactions and decision-making.

While some families may incorporate their mission statement into a constitution, each governance component has separate and distinct objectives. A mission statement is typically short, covering a family's values and purpose at a high level, while the constitution addresses the specifics. The constitution usually captures the agreed-upon guidelines for ownership, inheritance, and succession, as well as the parameters for using family wealth for personal or charitable purposes.

The constitution can be amended over time and, despite not being legally binding itself, can refer to other legally binding documents, such as a will or trust agreement. For example, a constitution might require all family members to engage in personal estate planning, make provisions for guardians, and keep beneficiary designations up to date. When a family business is involved, the constitution could contain directives about succession planning. A family constitution may also include incentives and limitations based on expected behaviors. For instance, a family could set clear expectations that prenuptial agreements are required. If a family member chooses to marry without one, she may face restricted access to certain family assets.

Ultimately, a family constitution will not solve all familial problems or map out a comprehensive estate planning strategy. However, developing standards through a constitution can increase cohesion among family members as they come together to create it.

INCORPORATING A FAMILY CONSTITUTION

Jacob and his wife, Rebecca, run a family business and have five children. As the couple updated their estate plans, they decided to revisit the business' succession since only three of the children were involved in the enterprise. Though the entire family was close and typically made decisions together, Jacob and Rebecca wanted to maintain the strength of the existing relationships and avoid any animosity that could emerge as a result of unilateral decision-making and lack of communication.

During a family discussion, Rebecca and Jacob explained that it was important to them to balance the needs of the family with the needs of the business. Together, the family discussed each child's various skills and how they could add value to the business. This setting gave everyone a voice, both individually and collectively. As a result of these honest and transparent conversations, three children remained involved in the business while the other two agreed to continue channeling their energy on external endeavors.

After establishing individual roles and responsibilities, Bernstein helped the family craft a constitution to set boundaries between the family members and their different roles (e.g., family member, business owner, business manager, etc.). The constitution defined the relationships with each other and within the family business. The family also agreed to include expectations for family members who want to work or manage the business versus family members who wish to be owners.

The constitution codified the policies, practices, and procedures outlining how the family members could enter and exit the business. It also provided guidelines for resolving conflicts that may arise down the road. As a result of the family's collaboration, they received buy-in from each child and formed a constitution that provided a clear vision for the family and the business while developing a framework to guide future decisions.

FAMILY ASSEMBLY

Estate planning can be difficult because many people wish to avoid thinking about sensitive issues like death or disability. Holding a family meeting to discuss estate planning can make family members uncomfortable. Yet doing so can help them agree upon legacy plans, legal documents, and shared family values. Having a family assembly allows adult family members, their spouses, and children over a certain age to participate in discussions that can set the stage for an easier transition of wealth when the time comes. A family assembly also creates the opportunity to discuss and explain current and future wealth transfer plans as well as a chance to review trust asset management and performance.

A FAMILY ASSEMBLES

David established a trust for the benefit of his minor child. Worried about the impact, he never divulged the existence of the trust or the extent of the wealth to his daughter. Ahead of the first distribution, David asked Bernstein to facilitate a family meeting. The meeting's objectives included opening the lines of communication between father and daughter, discussing the existing estate plan and purpose of the wealth, and establishing a plan to educate and prepare David's daughter to steward the fortune.

During the meeting, David revealed the trust and acknowledged that his lack of communication came from a place of protection and not restriction. David explained that he funded the trust to create opportunities for his daughter and encourage her to pursue her passions. To prepare his daughter to manage the trust and make wealth-related decisions, they agreed to have Bernstein create an education program. As a result of the meeting, David's daughter is aware of her available resources and the expectations attached. She is also participating in education sessions and pursuing a career she is excited about—rather than one she thought she needed for financial security.

INCORPORATING GOVERNANCE PRINCIPLES INTO AN ESTATE PLAN

Estate plans should be flexible enough to accommodate changing family circumstances. Here are some ways a family can incorporate governance principles into an estate plan.

FAMILY TRUSTS

Family trusts should reflect a family's goals and values. Depending on what matters most, a trust can foster charitable giving, incentivize desired behavior, and implement responsible investing strategies, among other goals.

Choosing Trustees

A trustee is an individual or institution responsible for managing, investing, and distributing assets from a trust. A trustee should review family values regularly to preserve the grantor's legacy and wishes. Keeping the lines of communication open so that beneficiaries can articulate their needs and wants is also critical. The trustees could be chosen by a representative committee of all beneficiaries (such as a family council, if they have one).

- An individual trustee should have both fiduciary knowledge and experience serving—someone who will understand the legal requirements, comprehend the terms of the trust, make or responsibly delegate investment decisions, and maintain proper records.
- A corporate trustee provides management and recordkeeping expertise while remaining objective, helping to prevent family conflict. Corporate trustees exist indefinitely, so a family can count on the trustee to serve through several generations of beneficiaries if desired. If not, it may make sense to include in the plan the ability of the grantor or future family members to remove or change the corporate trustee under certain circumstances.

When deciding who will be responsible for trust assets, honestly evaluating an individual's talents—along with the time required to fulfill the duties and obligations—should play a significant role. A combination of an individual trustee and corporate trustee may also make sense. This way, beneficiaries are not just interacting with a professional they may not know. Combining professional management expertise with an individual's knowledge of the family and the beneficiaries' needs and circumstances can lead to decisions that reflect family values.

Trust Distributions

Trusts can provide specific provisions for how a trustee evaluates and makes distributions. Some trusts instruct the trustee to distribute funds to beneficiaries at particular ages, such as 30, 35, or 40. The idea is that by the time the beneficiaries reach these ages, they will have gained financial maturity. Though designed to protect money long term, in some cases such instructions have the opposite effect and may instill an unfortunate sense of entitlement. Outright distributions can also expose the assets to claims of the beneficiary's creditors, including spouses.

In contrast, families could create a trust that distributes funds, as circumstances warrant, during the beneficiaries' lifetimes and operates like a family endowment to help—rather than constrain—prospective heirs. Together the family can determine how the money should be spent to reinforce the message to beneficiaries that it is an investment in themselves, not a distribution to them.

A letter of wishes can accompany a trust document and is a good way for a family to understand the purpose of the wealth while providing expert guidance about how trustees make distributions to beneficiaries. A grantor can enumerate her values and wishes within the letter and define behaviors worthy of receiving trust assets (e.g., graduating business school or starting a business). The letter can also request withholding distributions if they wouldn't serve the beneficiary's best interests (e.g., not making a distribution to a beneficiary who is actively struggling with substance abuse).

Families can also use private trust companies (PTCs) and family offices (FOs) to manage and control assets with the overall goal of guiding the use and enjoyment of family assets across generations. Both PTCs and FOs will be covered in more detail in subsequent papers in this series.

Conflict Resolution Provisions

Conflicts can arise regarding how to manage trusts. Beneficiaries may disagree with one another or be unhappy with how a trustee is handling and administering trust assets. Including dispute resolution language in the trust that outlines a resolution strategy can help reduce tension, avoid high costs, and preserve family relationships.

ADDITIONAL CONSIDERATIONS FOR "PURPOSEFUL" PLANNING

A "purposeful" approach that aligns an estate plan with family values requires a delicate balance of financial and emotional considerations, including:

Roles and responsibilities

When assessing roles in a family's future, think through each family member's responsibilities and create a list of important people inside and outside the family. Include a brief evaluation of each person's strengths and weaknesses along with descriptions of the roles they might play. Consider whether they will succeed in the work the family has outlined.

When decisions are made, have a conversation or write a letter of intent spelling out the reasoning behind those decisions and objectives. Doing so can help reduce the likelihood of conflict later. For example, naming one family member as a trustee over another without explanation could increase family disharmony. It can also be beneficial to outline a process for filling vacancies in a way that reflects the family's values.

Non-negotiables

Determine non-negotiable priorities upfront and make them clear to prospective heirs before starting a dialogue. This conversation is designed to communicate the behaviors that are encouraged. However, inheriting wealth isn't the only thing that will motivate a prospective heir to reach specific achievements. Developing future leaders and having conversations about the family's purpose and vision are also vital parts of the process.

Collaboration increases cohesion

Establishing governance structures to enhance an estate plan is about collaboration—not pressure and intimidation. Involving family members in this process can make it more meaningful, satisfying, and successful. Once parents have clarified their intentions and attained a greater understanding of how their plans might affect their family, they are in a much better position to move forward confidently and execute their estate plan.

Professional support

How estate plans are perceived is as important as how they are intended. For perception to reflect intention, a family needs to have clearly defined goals concerning mission, vision, and values and communicate that to their advisory team. Involving the right people in the process—tax professionals, estate planners, financial advisors, and others—can ensure a family's plans reflect their wishes.

PROFESSIONAL PARTNERSHIP

Helping families create a "purposeful" estate plan requires a multidisciplinary approach. Working with a family's team of advisors, Bernstein (or another advisor with similar capabilities) can facilitate conversations with families to help uncover their shared values and purpose for the wealth. Taking findings from these discussions and sharing them with the other advisors allows professionals to incorporate the family's work into other facets of the estate planning process, resulting in a comprehensive legacy plan.

BRINGING IT ALL TOGETHER

Sarah and Joel sold the business they founded and with the proceeds funded trusts to benefit their three young-adult children. They expressed a desire to begin unveiling the family wealth to the children but were concerned that the knowledge would demotivate them. The couple scheduled a family meeting to disclose a portion of the family wealth and allow their children to get comfortable with the estate planning that was already in place. To open the meeting, Bernstein facilitated a values exercise to set the stage for a free-flowing exchange. This exercise also gave Sarah and Joel additional perspective on potential gaps in their estate plan and allowed for easy dialogue regarding their shared philanthropic goals.

In the next part of the meeting, the parents revealed that each child had a trust set up for their benefit. Sarah and Joel involved their attorney in the discussion to explain why they chose to fund trusts, rather than make outright gifts. The couple didn't want their children to view receiving a gift in trust as having "strings attached." The attorney explained the intention was to provide for professional management of assets and creditor (or divorce) protection.

The initial meeting helped pave the way for more formal governance structures. In future meetings, the family worked together to create a family mission and vision statement. Quarterly education meetings and semiannual family gatherings were established to discuss investment performance and philanthropic goals. The family also decided to establish a new Donor Advised Fund to carry out their charitable mission, identifying causes tied to their shared values.

As time passed and the family grew in numbers, a marriage proposal prompted the creation of a family constitution.

CONCLUSION

Proper estate planning allows families to transfer wealth in a manner that is consistent with their goals and aspirations. Traditional planning can be enriched by considering the family beyond this initial baseline. If a family's core beliefs and values are at the forefront of the estate planning conversation, intentions are less likely to be misunderstood. Integrating governance structures into an estate plan can help prepare future heirs to receive wealth, make joint decisions, and avoid unnecessary disagreements that may leave relationships strained. It can also turn an ordinary estate plan into one that is "purposeful."