## Talking About Estate Planning

By Jon J. Gallo and Eileen Gallo, Ph.D.

n successful completion of the bar exam in California, an applicant is admitted to practice as an attorney and counselor-atlaw. According to the American Heritage Dictionary, a counselor is a "knowledgeable person who provides advice and guidance." Much of the advice and guidance that estate planners provide deals with highly technical issues, ranging from structuring marital deduction trusts to explaining the issues involved in choosing between a grantor retained annuity trust and an installment sale to an intentionally defective grantor trust. The American Bar Association and state and local bar organizations provide a great deal of continuing legal education in these technical areas. But clients also turn to estate planners for personal advice and guidance. Just think of some of the personal issues an estate planner needs to address: How and when should clients discuss their estate plans with their children? How can adult children who are worried about their parents' lack of estate planning raise the topic? When the client (or the client's child) comes to an estate planner to discuss a prenuptial agreement, what advice should accompany the agreement? And how generally should the estate planner counsel the client?

One should start with a fundamental issue: What advice should an estate planner give clients when they ask whether they should discuss their estate plan with their adult children? If the clients do not ask the question, should the estate planner volunteer advice? The authors cannot count the number of times they have worked with adult children

who have no idea of their parents' net worth, let alone the details of their estate plan. A study by U.S. Trust shows that this experience is typical. Less than one-third of those surveyed had shared their estate plans with their adult children.

John Levy, a pioneer researcher on the effects of money on children and an advisor to wealthy families in Northern California, observes that not only is it common not to share estate plans with children but "when kids work up the courage to ask their parents for specifics, they often get slapped down." Perhaps the most common reason parents give for why they do not share their estate plan (and their net worth) with their children is that "knowing how much we have and what they are going to inherit will harm them: it will demotivate them." Levy believes that this belief is built on two underlying concepts:

- "Making a lot of money is the most important thing for my child to do. I don't want to do anything that interferes with this goal; if my child knows she has a trust fund or that I'm worth a lot of money, she may not work hard or may select a job that doesn't produce a high income"; and
- "I'm raising a child who lacks both a work ethic and a sense of responsibility."

The first underlying concept making a lot of money is the most important thing for my child to do overlooks the fact that for some people, making a lot of money is far less important than becoming a writer, artist, or teacher or giving money away through philanthropy. The

world needs poets as well as successful entrepreneurs. Clients should be reminded that affluence, handled properly, makes it possible to help their children become either.

The second underlying concept my child lacks both a work ethic and a sense of responsibility—is an unfortunate fact of life that many estate planners see in their day-today practices. If clients raise their children with a strong work ethic and a sense of responsibility, the children will want to do the best they can no matter what career path they take or how much is in the trust fund. On the other hand, clients who have raised children who lack both a work ethic and a sense of responsibility probably should think twice before telling them how much they are going to inherit. Doing so will likely do nothing more than increase their sense of entitlement. If clients find themselves in this situation, they have more important issues to worry about than whether to discuss their estate plan with their adult Peter

Do trust funds really demotivate children? Many of the wealthiest American families have worried about creating too large a trust fund.

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"The parent who leaves his son enormous wealth," Andrew Carnegie wrote in an 1891 essay, "generally deadens the talents and energies of the son and tempts him to lead a less useful and less worthy life than he otherwise would." Warren E. Buffett, the richest man in America until he was unseated by Bill Gates, was quoted in the 1990s as saying that he was in favor of giving his children enough money that they can do anything but not so much they could do nothing. Other families, such as the Waltons, have done exactly the opposite, leaving vast fortunes to their children. It hasn't seemed to harm some of them, at least from what is reported about them in the news. Sam Walton's oldest son, S. Robson Walton, worth \$20 billion or so (some of which is through trust funds), is a

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Columbia Law School graduate, an Iron Man tri-athlete, and chairman of the board of the world's largest retailer. He certainly does not seem unmotivated.

Based on the authors' observation of clients, friends, and family and their reading of the literature, it appears that trust funds can serve as an incentive for children who are entrepreneurial but possibly might be a disincentive for children who work as employees. According to a study published in the 1994 Journal of Political Economy, entrepreneurs who received significant inheritances from their parents were more likely to stay in business for themselves than entrepreneurs who did not receive significant inheritances. Moreover,

the revenues of companies run by the entrepreneurs who received larger inheritances grew 20% faster. On the other hand, based on a study of the tax returns of 2,500 Americans who received inheritances in 1982, the same authors reported in the May 1993 Quarterly Journal of *Economics* that the more money left the children, the more likely they are to retire. "A single person who receives an inheritance of about \$150,000 is four times more likely to leave the labor force than a person with an inheritance below \$25,000." The problem with this conclusion is that the study was conducted under such strict privacy safeguards to protect the anonymity of the taxpayers that nothing is known about the inheritors except how much they received. Based on the authors' experience with inheritance patterns, it is certainly possible that the recipients of the larger bequests were older and approaching retirement age and those receiving smaller bequests were younger and thus less likely to retire.

If the clients decide to create a trust for their children, or if their parents or grandparents have already done so, Judy Barber, a family business consultant in San Francisco, stresses the importance of helping those children develop a guiding passion in life. It may involve philanthropy. It may be entrepreneurship or becoming an architect, a teacher, or a musician. Freud observed that each person has two major needs in life: to be loved by another and to feel competent. If the clients' children are economically secure and can maintain at least a middle-class lifestyle without working, they need to develop a purpose that helps guide their lives. If they have such a guiding interest, the trust fund is not a disincentive to responsible behavior. Without a guiding interest, problems can and often do occur. As the mother of three adult children who began receiving distributions from their grandfather's trust at age 18 observed to the authors, a trust fund can enable children to live a "half

life," in which they neither have to work nor have a guiding interest that gives meaning to their lives. Instead, the trust distributions might simply "buffer them from harsh reality." One of her children found himself in agreement. In the authors' interview with him, he commented that he wished he had not received the money at such a young age because it created problems of self-worth. Although society expected him to work, he did not have to, and even though it gave him the room to explore different lifestyles, too much money too early made it "tough to gain a sense of the value of money and easy to burn through it."

If the clients have concerns about the effect of gifts to their young adult children, whether outright or in trust, they should consider discussing their concerns and their expectations with the children before making the gifts. If the gifts are being made with strings attached, the children should know in advance. Even if there are no express conditions, there may be expectations that should be articulated. Clients may have expectations about how their children should express gratitude for their largesse. As financial advisors, estate planners can help their clients identify and articulate those expectations. If the client is giving her son and his wife \$100,000 for the down payment on a house, does she expect to be invited over to the new house for dinner regularly? Does she expect them to buy a house in a certain price range? Does she expect them to look for a house in her area? The client may also harbor expectations about how the children will manage the money and end up judging their every expense. The authors recall talking to an outraged mother who gave her daughter a \$10,000 gift to help her defray educational expenses and learned subsequently that she used part of it to take a \$2,000 vacation.

Daniel M. Stern, C.F.P., and psychiatrist Deborah Nadel, M.D., are a husband and wife consulting team who live and work in Santa Monica, California. They suggest that estate

planners should not only help their clients identify their expectations but also help them examine and clarify them before communicating them to their children. Are the strings that are attached reasonable ones? For example, the child who spent \$2,000 on a vacation may need help in how to handle money. The parents who give their married child money for the down payment on the couple's first house may expect regular dinner invitations or want the children to buy a house in their neighborhood. They need to consider whether they are using money as a means to control their children rather than fostering their growth. Helping the clients examine their motivations will lead to a healthier interaction between parent and child.

Many estate planners deal with clients who impulsively change their estate plans as a way of rewarding or punishing their children or grandchildren. If they have a fight with a child, their first step is to call the lawyer and change their will to reduce the child's share of the estate. If a grandchild does something memorable, perhaps the grandchild's share of the estate is increased. Several months later, after thinking things through, they usually tell their lawyer to revise the will again so that everyone is treated equally. An estate planner working with one of these people should strongly recommend that the client not convene family meetings to announce who is in and who is out of the will this week. Such an approach tends to be highly destructive.

Stern and Nadel recommend that estate planners should try to persuade their clients to step back and look at what they are doing. Clients should not immediately change their estate plans under stressful circumstances. They should take sufficient time to reflect and determine carefully whether the conflict justifies or should result in a change in inheritance rights. Encouraging clients to make reasonable, constructive, and meaningful decisions, not impulsive and punitive ones, will benefit both

the clients and their children.

A number of estate planning techniques involve the formation of various partnerships or trusts involving different children. A family meeting in which these techniques are discussed and explained can keep some members of the family from jumping to the wrong conclusions. The authors have been consulted on several occasions by individuals convinced that one or more siblings were engaged in a nefarious plot to seize control of the family wealth, only to discover that the "plot" was part of a sophisticated estate plan that had not been properly explained to the children.

Prenuptial agreements involve other sensitive areas, especially when considerable disparity in wealth exists between the two spouses-to-be. Quite frequently, the parents of the wealthier spouse-to-be raise the subject of a prenuptial agreement. The estate planner may have helped the clients transfer substantial wealth to their child through various estate planning techniques. Now, the clients want to protect their child's wealth in the event the marriage does not work out. The young couple, on the other hand, are madly in love, cannot imagine that their marriage would ever run into trouble, and may be upset over what they perceive as the clients' lack of trust. The problem is enhanced if the clients have not talked to their children about the family wealth. The authors have actually encountered situations in which the parents of the wealthier child insist on a premarital agreement, while balking at revealing their child's net worth, not only to the other party but to the child! It had to be pointed out that a premarital agreement that fails to provide the other party with adequate financial information may not be upheld if challenged.

Prenuptial agreements that are imposed by the parents result in a couple who feels coerced. The less wealthy spouse is also likely to conclude that his or her spouse values wealth more than their relationship. Prenuptial agreements cause the least damage to the relationship when both parties participate in the process and agree with the agreement's provisions. In some instances, resistance to a premarital agreement is so great that abandoning the concept should be recommended to the parents. Instead, a premarital inventory can be prepared to facilitate tracing assets in the event of future marital difficulties.

The issues are made even more complex if the wife-to-be is the wealthier spouse. Research in the area of "fiscal unequals" (a term coined by Joanie Bronfman, M.A.) suggests that the parties to the marriage must confront conflicted and ambivalent feelings. The husband may feel embarrassed, guilty, or ashamed to be supported by his wife at a higher standard of living than he

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could provide through his employment. The wife may worry that her husband married her for her money. John Levy points out that if the wife's resources make it optional for the husband to work, it is imperative that the wife respect (if not agree with) his choice of vocation, whether it is working on his own, being involved in managing his wife's assets, or becoming involved in philanthropy. Without this respect, Levy views the marriage as doomed to failure. Open lines of communication and even marital therapy may help the spouses confront and deal with these issues.

Many clients express frustration over the unwillingness of their parents to engage in estate planning. In her excellent book, How to Talk to Your Senior Parents About Really Important Things (Jossey-Bass 2001), Theresa Foy DiGeronimo, M.Ed., suggests several

techniques that clients may use to broach the subject of estate planning with their parents in a nonthreatening way. Clients can

- talk about friends or friends' parents who had positive experiences as the result of planning or negative experiences because of a failure to plan their estates;
- talk about the client's own experience in planning his or

- her estate;
- if the parents are interested in financial news, talk about the scheduled changes in the estate and gift tax laws; or
- talk about the need for health care powers of attorney (or similar types of advance directives) in the event of illness and use this as a lead-in to discussing other issues of estate planning. The November 3,

2003, issue of Time includes an article by Jean Chatzky on living wills, A Will for the Living, on this subject.

Estate planning can be a microcosm of a family's relationships. If clients can talk about these issues in a healthy way, it will nurture healthy family relationships and transmit positive values for generations to come.