Beyond the Grave – Jeffrey L. Condon

Notes and takeaways via Duncan Kelm and Bruce Kelm

Punishing success does not work between children

- When you give a larger inheritance to a child who has been unsuccessful the successful child will perceive it as if they have been punished for being successful
- Why would parents punish success and reward failure? Answer: they want an equal outcome which means giving more to those with less.

Always talk to your children about your estate plans

- If you care about maintaining family harmony after your demise then leave your money and property in equal portions regardless of economic circumstances

Failing to equalize lifetime gifts is one of the most significant sources of tension between children, AKA "Mom and dad paid for brothers medical school and my JC education, he got more and that is unfair"

As a general rule, do not leave a specific property to each child

- What starts out equal in value at the time you die may not remain equal years later, instead leave each child an equal share of each property so they will share the upswings and downswings of both

Do not name one child as your successor trustee, name all your children as successor co-trustees, it puts too much pressure on the single selected child.

Do not assume children can work it out themselves

- If your children will co-own or co-manage the family real estate or business, it is essential to help them resolve their conflicts without rushing to the courthouse by specifying how disagreements will be adjudicated
- Naming a third party trustee can help manage this process

The Transparent Trust

- Establish a Living Trust and leave your child's inheritance to your child "in trust" rather than outright to them
- The trustee and beneficiaries of this "Transparent Trust" will be your child
- As trustee, your child will have full control of the inheritance with no third party trustee looking over your child's shoulder
- As beneficiary, your child will have the sole discretion to spend the trust assets for any purpose
- When your child dies, any assets remaining in your child's trust will pass to your grandchildren
- Therefore money passes to grandkids, your child will not be able to direct your assets away from them.

How to solve a complicated child and grandchild problem

- Married son has no children, daughter has two children. Children will share the inheritance equally. When the son dies, grantor doesn't want money to go to wife of son, wants it to go back to daughter

- To do this the trust must retain the power to control where the money goes after Son dies, therefore Son may not be able to take inheritance outright
- An Irrevocable Protection Trust works well to keep family money in the family

Tom Glavin's Family Incentive Trust

- The trust states upon Glavine's death, all or a portion of his estate will be held by a third party "Money Manager." The Money Manager will distribute money to his children if they act in accordance with the "instructions" he has set forth in writing. In other words, the manager will pay his children more money if they act the way he wants them to act
    - This is managing from the grave and usually does not cause the behavior or action desired
- Children will view this plan as your way of continuing to test them even after you are dead
- Best planning advice: DO NOT control children too much from the grave

Using a bank trustee

- Does the bank see eye to eye with you as to how you want your money managed?
- What procedures are made or followed in making investment decisions?
- Who makes the investment decisions? If a committee, how often does the committee meet?
- How is the investment mix determined?
- Will the bank invest the principal entirely in growth assets, entirely in fixed income assets or a mixture of both?
- Is the investment analysis done in-house or by an outside investment firm?
- What is the bank's performance on its trust funds?
- You can always appoint one of your children as a co-trustee along with the corporate trustee if there are family issues that justify this approach

PPM known as personal property memorandum

- This is private instructions for what to do with personal property

If children are requesting to be placed as power of attorney be cautious about this, and consult an attorney

- If pressure is mounting from children after one spouse is deceased consult an attorney = inside elder abuse situation

Do not put property in joint names with your children, divorces and credit problems can arise

There really is no death tax anymore $11,400,000 per life, $22,800,000 per couple passes Federal estate tax free, subject to change in 2026-stay tuned.

A living trust can prevent your wealth going to the last caretaker, who might be abusive and manipulative

When you have a corporate trustee, instruct them how they should be investing the assets

- All for current generation and income
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- For a blend of both
- All for next generation and growth

If you hate your second wife and want to punish her, leave her in a situation where your first children cannot get their inheritance until she dies

- This causes huge issues between families
- Condon will not allow his clients to create a situation in which the first children have to wait for their second wife to die before they inherit. Instead, I prefer a plan in which you leave your second wife a specific amount and the rest to your children (Or vice versa)
- Don't count on children being generous when it comes to money
- After all, your second wife will never be their mom nor your kids her children.
- Recommends a full and frank discussion of your wishes with heirs, they may not like the why, but they will understand the what afterwards

If you are going to leave money and property to your child and grandchild

- A child can get extremely upset if they feel their inheritance is skipping them and going to their child, even if they get some too

How to make an equal trust for all your grandchildren with an estate worth $1 million, a son with one child and a daughter with three children where all grandchildren get $250,000

- When you die, your children will not inherit your $1 million estate outright. Your wealth will be delivered to a third-party trustee
- The trustee will hold this $1 million of wealth in an Irrevocable Trust for the rest of your children's lives
- The Irrevocable Trust is for your children's benefit. The Trustee will invest the $1 million and pay your children the income it generates. In addition, the trustee can dip into the $1 million for your children's support, maintenance, and medical needs
- When your son dies, the trustee will take his half ($500,000) and divide it equally between all your grandchildren, regardless of the family unit from which they came. So your son's one child and your daughter's three children will each receive $125,000 from your trust
- When your daughter dies the trustee will distribute her half ($500,000) to all your grandchildren, each one receiving $125,000 for a grand total of $250,000 each to every grandchild.

A good way to find a quality charity is charityfinder.com

Charitable Remainder Trust

- Ways to donate assets to charity, receive all the tax benefits and still remain in control of the assets until you die
- You transfer real estate to a charity. The charity will put your real estate in a special 'Charity Trust' The trustee of the Charity Trust will be the charity
- The charity trust will sell your real estate and invest the proceeds without any tax consequence. For the rest of your life, the Charity Trust will collect the income, administrator the trust, and pay you an annual amount, this is specified as a % of the account value annually

- Children lose out from Charitable Remainder Trusts because the charity is ultimate beneficiary.
- Best for people with wealth in house or real estate and don't have children
- Downside of CRT is you have to give up asset that is contributed

When considering the death tax liability

- Consider insurance policies, annuities, IRA accounts, pension plans, 401Ks, and any other asset that pays a death benefit - these assets are all includible in your estate

One of the best estate planning strategies is to gift your children money while you are alive

- Each person can gift another person $18,000 (2024)
- Another way to give money to family tax free: by paying medical and educational expenses directly

A and B trusts do not really make much sense any more now with the death tax at $11,400,000 (2019 or $22,800,000 for a married couple, again subject to change in 2026-stay tuned.

- An A and B trust puts half of the assets in a trust for the children (trust B), and the other half in direct control of your surviving spouse (trust A). The surviving spouse has ultimate say over both trusts and draws income from trust B at least annually.

Give away income producing assets but retain the rights to keep income

- Ask attorney about GRITS, GRATS, or GRUTS planning

Generation skipping trust

- A generation skipping trust is a way to move additional assets beyond the $11,400,000 threshold
- Not as applicable now, but was a good tax planning strategy in the 1980's and 1990's
- The GST allows another amount of money to move to the next generation, but the child of the trust not the grandchild has the right to use it for their benefit. Only after the second death do the assets move on to the grandchildren
    - This is a way to avoid the tax for the next generation
    - The child becomes the beneficiary and then on their death the assets pass to their children, the grandchildren

Always ponder whether one of your children fail to act as an agent of my direction and refuse to follow through with my desires?

If this is a possibility you might need to be more creative with your estate planning

Who pays the death tax is an important consideration

- In a typical living trust the children inherit and thus the death tax is borne equally to all of them
- Each child receives an equal share of the estate and an equal share of the death tax
- Make sure attorney who drafts your estate plan defines the Living Trust's tax allocation provision
- There really is no worthwhile justification for NOT telling your children about the nature, extent, and quantity of your assets, and how those assets will be shared after you die

- In the absence of this discussion, the heirs are left to speculate why things were organized as they were AFTER THE FACT
- Can lead to hurt feelings, tension or outright hostility among the heirs
- Best practice: while you are telling heirs your estate plans, discuss general concepts as to how wealth was accumulated in the first place- use this experience to create a "learning moment" and wealth accumulation strategy to instill high net worth mindsets and work ethic in next generation