By Vic Preisser & Roy Williams

The Future of Estate Planning

Prepare heirs to receive and manage the assets they inherit

In May 1976, radio broadcaster Paul Harvey began a series of five-minute vignettes entitled "The Rest of the Story." It was so popular that it continued until his death in 2009—a span of 33 years! He would recite what everyone "knew," and then (after a commercial break) he would tell the "rest of the story," usually about how crisis turned into triumph. Only at the end would he disclose the name of the actual person or event. The nation hung on to his every word, waiting and guessing as to whom he might be referencing in his story.

We have been researching the transitioning of estates for the past three decades. We're proud to say that we believe we know "the rest of the story" that occurs after an estate transitions. Sadly, the rest of the story doesn't have the Paul Harvey upbeat outcome. Unaddressed by families or their advisors, the rest of the story is that 70 percent of estates come unglued[1] after the estate transitions. Siblings sue one another, resign from trustee positions for fear of being sued, withdraw from family life or lose their assets. In many families, the only element upon which heirs seem to be able to reach agreement is a willingness to share the cost of hiring a "will buster" and advertisements in the rear of legal journals can be found boasting: "Come to our firm. . . We can break any Will." To compound matters, research[2] also indicates that when parents passed away, the heirs "promptly selected their own (new) advisors," leaving mom's and dad's advisors behind to solicit (new) replacement clients. This loss of client percentage (following an estate transition) has historically ranged from 90 percent to over 95 percent as separate wirehouses discovered when conducting their own confidential internal research. No one was retaining their client base, and the cost/time to replace that base was significant.

In the face of this precipitous 70 percent collapse of estates following transition, The Williams Group began to re-examine parental concerns. Although we have coached over 500 families through their estate transitions, it was still surprising that most parents were concerned not for the size of their estate, but for the impact of their wealth on their (unprepared) heirs. Bi-annual surveys revealed the depth of parental concern when their top six fears[3] showed their priority concerns to be the impact of wealth upon their heirs, not the amount of wealth they might be (unable) to transfer or protect for their heirs. (See "What Are Parents Afraid Of?" p. 44.)

Research Contradicts Expectations

During the 20 years of interviewing 3,250 (transitioning) affluent families, we anticipated finding process errors with estate-planning professionals. Our hypothesis proved to be incorrect! We discovered that professional estate advisors (that is, legal, accounting and planning) were correct with respect to the assets 95+ percent of the time. In fact, only 2 to 3 percent of failed estates were caused by professional oversight, failure to be current, missing signatures or filing dates. It revealed an extraordinary finding that pointed to a new direction in estate planning—what one might call "the rest of the story." Advisors had long focused on preparing the assets for heirs and done so effectively. But, little was being done to prepare the heirs to receive and manage those assets.

In short, the estate advisors had focused on the "hard-side numbers" and, over time, the least prepared component had defaulted into unprepared heirs. The

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"soft-side" skills needed to prepare parents and heirs for the transfer of wealth and responsibility had never received the emphasis that other issues had: taxation, preservation, governance and philanthropy set the pace, and dominated seminar topics in continuing professional education. Achievement in those four areas was eminently measurable. Achievement in the "soft-side" issues of preparing heirs was not so easily measured.

Post-transition Failure Rate Causes

Our interviews with 3,250 affluent families enabled us to refocus our estate-transition coaching on the primary failure causes. The most significant finding from this proprietary research[4] was that estates were experiencing post-transition collapse because the family and the heirs weren't prepared for the post-transition period. This was true whether a business, real property or other forms of assets were passed on to the heirs. In the absence of comfort about the readiness of their heirs, parents often reverted to complex, multi-layered estate plans that attempt to control the future by protecting the heirs from the heirs' lack of readiness.

A parent's desire to protect his heirs can lead to more money spent drawing up tighter trusts, more restrictive conditions and financial gymnastics to manage the future for the children.

Further research into "why" they weren't prepared identified the primary cause as a breakdown of trust and communication within the family unit. Parents were routinely decisive in dealing with business matters or in selecting their professional advisors. But when it came to inviting their heirs to become involved in the preparation of the wills, trusts, etc., they were very reluctant. Parents feared that heir awareness of the estate parameters might diminish their children's motivation and distort their values. They also feared that heirs were insufficiently mature to participate in decisions concerning their own future. Parental fears accompanied disclosure (to the children) of the size of the estate, the makeup of the estate (liquid assets, real property and long-term bonds) and the parental intentions for distribution of the estate's assets. Heirs sought information,[5] but parents provided little. It wasn't a lack of love or concern on the part of the parents. It was their instinct to "protect the children until they were ready."[6] This desire to "protect" only led to mistrust, which led to less communication, which finally resulted in a "cordial hypocrisy" among family members agreeing to not bring up the subject (of the estate plan). It was easy for the heirs to rationalize that estate discussions would only upset everyone and "make us seem greedy and ghoulish." The result was that steadily more money was spent in drawing up tighter trusts, more restrictive conditions and financial gymnastics to "manage the future for our children." As more money was spent on locking in future asset management through more restrictive and tightly drawn documents, the cost went up. We routinely encountered families who spent more than $1 million on their estate plans. They were loathe to reexamine those estate plans because of the "sunk cost" already in place. The outcome: less prepared heirs more likely to fail in their future responsibilities.

What Are Parents Afraid Of?

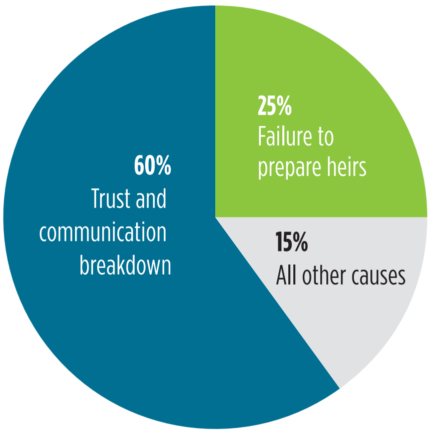
The top six concerns

Percentage of Parents Marking This Concern	Concern
65%	"Too much emphasis on material things"
55	"Naïve about the value of money"
52	"Spend beyond their means"
50	"Initiative could be ruined by affluence"
49	"Won't do as well financially"
42	"Hard time taking financial responsibility"

— *Institute for Preparing Heirs*

Post-transition Collapse

Here's why 70 percent of estates fail



— *Institute for Preparing Heirs*

Use of Family Mission Statements

You'll note that the word "family" precedes the words "mission statement." Properly developed with the entire family, the Family Mission Statement (FMS) forms a unifying core to future family discussions, priorities and values, and guidance to professional estate planners. This isn't a mission statement for the family business, but an agreed upon mission for the family wealth[7] going forward. Once the FMS is in place, you can move to questions of strategy ("how do we get to our agreed-upon objective?") and roles ("what roles need to be filled for the future management of our estate?") Then the family is in position to fulfill their agreed-upon mission. An FMS should involve every adult member (we define "adult" as age 16 or older—not age 18 or 21 or older) of the family during its development and should be led by a skilled outside facilitator. If a family member tries to lead the FMS development, research clearly shows it to be similar to one family member trying to teach another family member to drive. . . it's dad's car and dad's rules and dad's mission statement ("not mine!"). This leads us to the observation made by many successful team leaders and coaches: Without a common mission, common values and authentic trust, no team will stay together over the long term.

Once the family develops a glossary of terms to accompany the FMS, clarifying every important word in the FMS for the estate advisors as well as forgetful or future family members, it should be forwarded with the FMS to the estate advisors working with the family. With clear long-term priorities, an advisor knows how to integrate the documents around those long-term priorities. The advisor can suggest document changes that will enable the family to pursue its vision, rather than waiting for a request from the clients. Finally, changes in the family situation (for example, marriage, divorce, adoption, death and illness) can immediately be evaluated with respect to their impact on the overall family. However, it's our experience that unless the FMS language is well defined with an essential glossary of terms, advisors will routinely misinterpret its intent. Here's an example of one family's actual FMS. It's short, to the point and easy for family members to use in evaluating their larger decisions on family direction:

> ***Family Mission Statement***
>
> *We are committed to family bonding, community outreach and fun. We grow the family assets and provide for the family's* ***education****, growth and security.*

Twenty-four words that every adult family member agreed upon. It took about one-half day of facilitated discussion to accomplish. But the glossary of terms (giving advisors a clear definition of what the family meant by every word) took another one-half day. You'll note that the word "education" is bold in the above FMS. What seems "nicey-nicey" above suddenly becomes crystal clear as to what the family estate will/will not provide for with respect to "education." Here's the family's definition for the word in the context of their FMS:

> ***Defining the word "education"***
>
> *[E]ducation is defined by us to mean Estate financial support for any family member attending an accredited Institution offering Academic or Vocational Training, to include payment for Room, Board, Tuition, Travel and all related expenses not to extend beyond 125% of the time required for the*

normal completion of the course, degree, or certificate of completion, except that delays caused by the Institution's unavailability of classes shall not be calculated in the time requirements. Annual progress reports will be required to qualify for support.

Eighty-three words to define one word in the FMS. This essential glossary of terms clarifies family intentions for those professionals charged with drafting documents. The family seeks consistency, unity of purpose and removal of ambiguity. Families revise their FMS whenever they choose to do so, so long as that revision is done in the same manner and with the same breadth of participation as the original FMS.

Awareness, Assessment and Action

In coaching families to a successful post-transition outcome, we have found there are no easy short cuts. Families appear to naturally seek a specific sequence that's essential to their agreement to embrace change. Advisors who vary from this sequence usually had to backtrack and restart the process of having the client embrace the need for change.

First, families must become aware that there's a risk of post-transition failure for their heir families. Unaware of the high risk hovering around the 70 percent failure rate, (See "Post-transition Collapse," p. 45) they simply don't get excited about entreatments. Clearly, history tells parents two things:

1. The skilled professionals who design estate plans to address issues of taxation, preservation, governance and philanthropy do so with a resoundingly dependable rate in the 98 percent range. That gives the patriarch and matriarch confidence that their assets will transfer as intended.
2. They will not be around to experience the post-transition actual outcome. Assets will transfer successfully, but when they do few parents remain present to testify as to (often chaotic) outcomes.

This isn't an indictment of the professional process. It's simply the reality that it's difficult to make family leaders aware of the risks that are approaching during the yet-to-occur post-transition period. And, absent that awareness, it's difficult to capture their interest. Advisors knew whether mom and/or dad had expressed concerns to them about unprepared or not-ready-for-prime-time heirs. Advisors need to make a critical decision with respect to guiding them towards competent help. The first step is simply to make them aware of the risks of doing nothing. Some initial steps an advisor might consider could be:

1. Give them some reading material on preparing heirs;
2. Invite a speaker to give a non-financial "Private Briefing" on the topic of preparing heirs to families or their advisors (or both);
3. Send them articles and clips of current estate issues that seem driven by untrusting, uncommunicative and unprepared family members; and
4. Talk with them about the commonality of the heir readiness problems for most families. Their situation isn't unique or a sign of failure.

> It's human nature to assume that anything negative or risky probably doesn't apply to you—but it does.

Second, families immediately gravitate from the "general" risk to whether the "specific" risk applies to their individual family. It's human nature to assume that anything generally negative or risky probably doesn't apply to you. But it does. The problem has been, historically, measuring or assessing risk. There are very few measurement tools available that assess or measure risk with respect to estate transitions. The answers to the 10 questions in the wealth transition checklist (See "Wealth Transition Checklist," p. 47) were about 80 to 85 percent predictive (when answered accurately with respect to the entire family—not just the individual family member assessing himself) regarding post-transition success or failure. They're based on a sample of 3,250 transitioning families.

Wealth Transition Checklist

The answers to these positive affirmations are predictive of post-transition success or failure

1. Our family has a mission statement that spells out the overall purpose of our wealth.
2. The entire family participates in most important decisions, such as defining a mission for our wealth.
3. All family heirs have the option of participating in the management of the family's assets.
4. Heirs understand their future roles, have "bought into" those roles, and look forward to performing in those roles.
5. Heirs have actually reviewed the family's estate plans and documents.
6. Our current wills, trusts and other documents make most asset distributions based on heir readiness, not heir age.
7. Our family mission includes creating incentives and opportunities for our heirs.
8. Our younger children are encouraged to participate in our family's philanthropic grant-making decisions.
9. Our family considers family unity to be just as important as family financial strength.
10. We communicate well throughout our family and regularly meet as a family to discuss issues and changes.

— Institute for Preparing Heirs

If the family answered seven or more of these questions in the affirmative, then there's a high degree of certainty that their post-transition estate period will successfully retain wealth, family coherence and reputation. With six or fewer "Yes" answers, the odds begin to drop dramatically with respect to a successful post-transition experience. Of course the burden is on the assessor to accurately represent the family's condition with respect to the above statements.

New Assessment Tool

One recently developed tool is based upon asking each family member, anonymously by mail, 50 short questions, and then compiling their answers into a Family Readiness Assessment (FRA). The FRA has the advantage of being 95 percent accurate in predicting estate post-transition[8] outcomes and serves as a "baseline" for the family's current situation. Then, if action is taken to change the family's post-transition risk, progress (or lack thereof) can be measured by comparing it to the earlier "baseline." While the report is fairly complete for each family,[9] it's designed around measuring three primary elements within the family (See "A Marked Improvement," p. 48):

1. The level of trust and communication within the family (blue)
2. The readiness of the heirs (green)
3. The existence of a consensus FMS (gray)

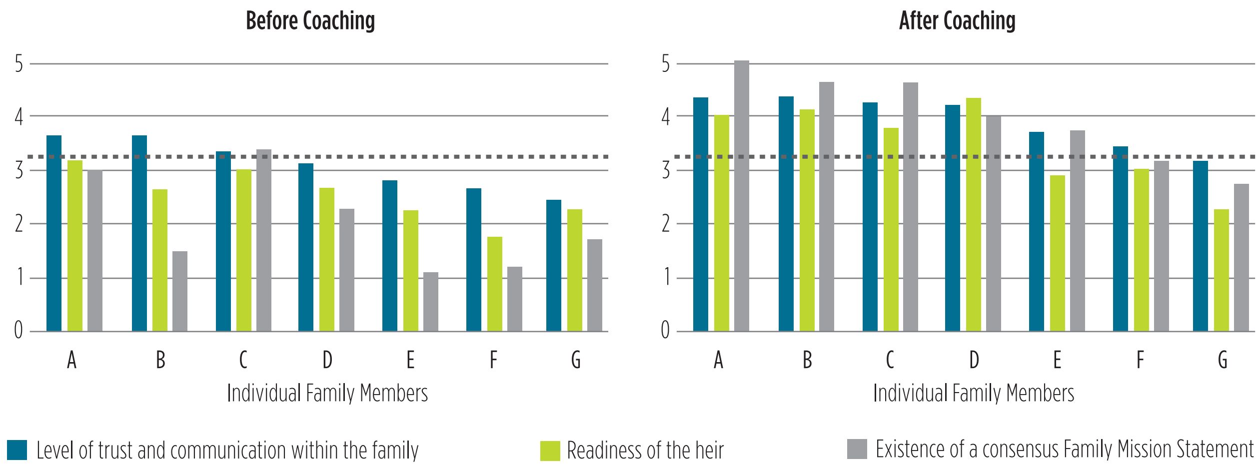
In "A Marked Improvement," the family can readily see a graphic indication that their "post-transition risk level" has substantially improved with the advent of family coaching in preparation for the estate transition. The dotted line across the chart is the target level that individual family members needed to reach to successfully participate in the overall post-transition success of the family.

Third, and finally, families can take action after completing the awareness and assessment phases. Having completed the two preceding steps the family can now determine whether they wish to enter into a full family coaching arrangement (with a competent family coach) or select some "a la carte" work such as an FMS, establish a philanthropy involving the heirs or even arrange for mentoring of heirs to buttress their weaknesses/strengths.

A Marked **Improvement**

Action taken to change one family's post-transition risk substantially raises the likelihood of a family's successful wealth transfer

The dotted line is the target level (on a scale of 0–5, with 5 being the highest level) that individual family members needed to reach to successfully participate in the overall post-transition success of the family.



— *Institute for Preparing Heirs*

Recommendations

The research findings provide a treasure trove of information for those estate advisors who ask the question, "The assets are ready, but are the heirs ready?" Based on the evidence that we've gathered over the past 20 years, we suggest that the following will be fundamental future requirements for estate advisors to create a successful post-transition experience and the retention of heir families as post-transition clients:

1. Make your client aware of the post-transition estate risks for heirs. You have a sense, even without meeting the entire family, whether the parents have confidence in the abilities and values and motivation of their heirs (families). As we said earlier, give families information that will help them to understand the risks and some potential answers that are available through your professional practice.[10]
2. Assess your client family on an individual basis to develop a "baseline" for future progress. Measurement is critical, or progress becomes a matter of speculation. Families need to know their starting point, and then whether selected action is moving them ahead.
3. Recommend the family take action only when the family has fully understood and accepted the need for change. You can't have insurance against loss if you don't pay the policy premiums. You can't reduce risk of post-transition loss unless the entire family is willing to invest in the difficult task of change before the transition occurs.
4. Identify a competent family coach. We've seen and trained dozens of family coaches[11] and made recommendations to literally hundreds of families. It's important to do the due diligence before allowing your credibility to go on the line with a recommendation. We've found the critical credentials to be:

- A firm that does family coaching as its primary business. No insurance sales, tax advice, estate planning or other potentially competing "offers."
- A firm that has a data base, not an opinion base. What do they know, and what is it based upon?
- A firm that can measure risk of post-transition readiness. Where is the client family today, and where is the client family tomorrow? In other words, can they prove progress or reduction in risk?
- A firm that has a documented process. Without it you can't inform the family what they can expect from a family coaching firm. Without process, coaching tends to become counseling and our experience says families regard looking backwards (to the origins of the problems) as being not nearly as effective as looking forward (how we behave from today onward).

5. Help the client family develop a strategy for reaching their mission, or recommend a source that can provide that help. Seek to assist them in defining observable, measurable standards for those roles that

will need to be filled to administer the post-transition estate. Once roles are identified, the estate advisor will have to call in all documents for review, and revision as needed (to conform to both the FMS and the newly identified roles). The new review will bring the advisor closer to the entire client family, especially heir families where the loss of client rate following the estate transition is currently above 90 percent.

6. Develop in-house (or referential) skills that will differentiate your practice. This means a change in the span of competencies that you offer your clients. Beyond the fundamentals of estate planning, listen to their concerns regarding the readiness of their heirs. Then be in position to offer help through a skilled member of your firm or an outside third party reference specializing in the field.
7. Plan to revisit your client's preparations for his post-transition period at least every two or three years, or whenever a significant family event takes place such as marriage into a blended family, a death or divorce among heir families or a major conversion in assets (for example, business or property) into another form (for example, liquid assets or securities).

As Paul Harvey said: "The rest of the story" is now clear. Data, tools and techniques are becoming available to address post-transition planning for your estates. And, the highest return on your personal focus may not be found in trying to lift your asset transfer success rate from 98 percent to 99 percent. It may be in lifting your client's heirs from a 30 percent post-transition success rate to an 80 percent success rate. In short, there seems to be a new "balance point" emerging for professional estate advisors. Tomorrow's advisors will give more weight to the post-transition heir risks and transition planning, balancing off their historical focus on the transitioning assets. That's a difference your clients will see, appreciate and thank you for. TE

Endnotes

1. *Barclay's Wealth,* Volume 3 (2007); Roy Williams and Vic Preisser, *Philanthropy, Heirs & Values* (2005), Appendix B at p. 149.
2. *Barron's Financial Times,* Oct. 17, 2005 at p. 30.
3. U.S. Trust bi-annual client survey, number XIX.
4. Clients were promised confidentiality and were referred by members of The Executive Committee (now known as Vistage) and their friends across the United States and Canada. The client data was stored and indexed by confidential family code names to protect clients' anonymity.
5. In the absence of information, heirs quietly researched their own family, often finding information in public records through a Google search or through their work/internships with the family business(es).
6. We have had parents with children in their 40s, all with professional careers and advanced graduate educations (in one family of three children, one was a physician, the other an accountant, and the third had an MBA and worked as an investment banker) with the parent declaring "they're not ready yet to know about our estate."
7. Family "wealth" includes not only assets, but also the family's time, reputation, ability to influence, experience, education, background and the values of family members and spouses.
8. Based upon five years of field-testing.
9. Available from the Institute for Preparing Heirs, *www.preparingheirs.com.*
10. Informative materials, books and articles are available from *www.preparingheirs.com.*
11. The Institute for Preparing Heirs offers training, certification and toolkits for professional advisors pursuing post-transition planning, as well as coaching for individual families that request it.

SPOT LIGHT

Fickle Mistress?
Pierre-Auguste Renoir's oil on canvas "Femme accoudée," about 13 inches by 11 inches, painted in 1887, sold for $1,426,500 at Christie's Property from the Collection of Mrs. Sidney F. Brody sale in New York on May 4, 2010.