Entrusted Estate Planning in a Volatile, Uncertain, Complex, and Ambiguous World

By David R. York, Esq., CPA

Editor's Note: This article is based on the book Entrusted: Building a Legacy That Lasts *by David R. York and Andrew L. Howell (2015).*

In the early 1990s, the U.S. Army War College sought to describe what the world would be like after the Soviet Union's collapse. To do so, it came up with the acronym VUCA, for volatile, uncertain, complex, and ambiguous. In the years since, the term VUCA has been used to describe a whole host of different circumstances, geographic regions, and industries. The speed of change brought by technology and shifting views of culture have only accelerated and heightened these factors.

FORCES AFFECTING ESTATE PLANNING TODAY

Estate planning has never been immune to volatility, uncertainty, complexity, or ambiguity. That said, the following four factors make estate planning increasingly VUCA today.

Family and money. Estate planning takes place at the confluence of family and wealth, and that junction is inherently volatile, uncertain, complex, and ambiguous. Family conflicts and estate transfer disputes have been around for hundreds of years. That said, increasing amounts of personal wealth, coupled with more second marriages and blended families, have made conflicts more commonplace. This trend likely will grow over the next 40 years as the baby boomer generation passes away and transfers its wealth, which by many estimates may be upward of $40 trillion. This transfer ultimately will become the largest wealth transition in the history of the world.

Transfer tax law changes. Although they affect only a tiny percentage of Americans, estate tax laws have been through six major changes in just the past 20 years. And although transfer taxes (i.e., estate, gift, and generation skipping) make up only a tiny percentage of overall tax revenues, they are highly political. These taxes have advocates that include wealthy Americans such as Warren Buffet and Bill Gates as well as the insurance industry and charitable organizations. The future of estate tax law likely will continue to be filled with uncertainty and change.

Shifting views on wealth. Demographic changes have resulted in a quantum shift in views on wealth transfer. Baby boomers tend to think that wealth transfer is less important than their parents did; indeed, boomers seem to feel less obligated to leave an inheritance or sacrifice their lifestyles to do so. Fewer than half of baby boomers think wealth transfer is important, and only 3 percent believe they have any obligation to leave their children anything. In addition, fewer baby boomers are implementing wealth transfers during their lifetimes compared with the greatest generation, and 72 percent of boomers plan on doing their own estate planning differently from the way their parents did (York and Howell 2017).

Changing laws. Trust laws have changed fundamentally over the past 20 years. An increasing number of states have abolished or greatly extended the rule against perpetuities, thus giving trusts the potential ability to continue for hundreds of years. In addition, more than a dozen states allow a settlor of a trust to be a potential discretionary beneficiary and still afford the settlor creditor protection (these are so-called "self-settled trusts" or "domestic asset protection trusts"). Finally, many states have adopted decanting statutes that allow assets of a trust to be directed to one or more new trusts that have the same beneficiary but different dispositive provisions. All these changes have created tremendous flexibility, but they have also created added complexity.

ENTRUSTED PLANNING

The opposite of a VUCA world is a world that can be described as stable, certain, simple, and clear (SCSC). A stable, certain, simple, and clear estate plan is the goal of entrusted estate planning. Entrusted planning can be distinguished from traditional estate planning in the following ways:

DIFFERENT FOCUS THAN TRADITIONAL ESTATE PLANNING

Traditional estate planning is often asset-focused and usually does not take into account the unique individuals, personalities, and dynamics of each family. Traditional estate planning also tends to be tool-driven, which leads most planners to jump to strategies that pass along economic capital without taking into account the individual's or family's human capital. Traditional estate planning is generic, and often the estate plan prepared by an attorney for one family is indistinguishable from the estate plans prepared for every other family by that same attorney. Finally, people think of estate planning as a transaction rather than a relationship. Therefore, they think of their estate plans as done—yet most of us would never say that our families are done.

Entrusted planning differs from traditional estate planning in that it is beneficiary focused. It focuses on how to prepare future generations to maximize their potentials, rather than the mere transfer of wealth.

Entrusted planning is based on specific goals, values, and beliefs—those that are ongoing and everlasting and those that have percolated to the surface more recently. A multigenerational wealth plan cannot be built on outdated assumptions. Before any lasting plan can be implemented, it's critical to first identify the values, vision, and mission of the particular family, in their particular time and setting.

Entrusted planning is purpose-driven. Trusts, limited liability companies, charitable strategies, and other wealth-transfer devices are seen as nothing more than tools to accomplish the family's goals. Knowing the goal is the only way to have foresight to know when and how to use the tools.

Entrusted planning is customized; it does away with the generic. It recognizes that families are unique and their planning also should be unique. An entrusted plan is custom-built and takes into account the specific situations, people, and resources that make up each family and its wealth.

Finally, because a family is never done, the entrusted plan is dynamic and includes regular maintenance and updating to stay relevant and effective.

Imagine paying someone to come in and design an award-winning backyard, put it in place, and declare it done. It won't take long for weeds to overtake it. An entrusted plan may be up-to-date for any given period of time, but it's never completed. This means an effective entrusted plan should be consistently reviewed and updated as new family members enter the picture, people age, desires change, and Congress changes tax laws.

It's important to note that many of the tools of traditional estate planning serve important functions. Financial and medical powers of attorney, wills, and revocable living trusts are critical tools that every adult should thoughtfully implement. We call this foundational planning, and it's critical to effectively provide for individuals and families in the event of disability or death. Regardless of the size of a person's estate, this foundational planning is critical. In fact, for most families, foundational estate planning is all that's needed from a legal standpoint and can effectively work in conjunction with implementation of the disciplines outlined below.

That said, the one-size-fits-all mentality of traditional estate planning can lead to disastrous results as the amount of wealth grows. Many professional planners are either unaware of the possibilities, or uninterested in helping their clients develop a truly tailored and personal plan. Instead, they focus on the volume of clients, thus turning their practices into trust mills.

PRINCIPLES ARE CONSISTENT BEFORE AND AFTER DEATH

Your wealth is one of the most personal things you'll transfer, so why would you want it to do in death what you would never have wanted it to do while you were living? In other words, you might tell your children as they're heading off to college, "You can go do anything, but you can't do nothing." And yet what does your estate plan say? If it's based on a traditional model, it probably says: "If I die, here's a whole wad of money. Go do whatever you want with it."

Entrusted planning seeks to fix this type of disconnect. You value your children being active contributors to society while you are living, and you certainly hope for nothing less after you're gone. All things considered, including the issue of scale, you have to ask yourself: What would I leave to my family members right now that would be enough to protect them, but not so much as to completely disrupt their lives by causing them to lose the motivation to produce? How can I return to the roots of estate planning and trust law, which were to build on the ability and character of the recipient and to focus on a legacy of opportunities, as opposed to just assets alone?

For the children of high-net-worth clients, the inheritance of their parents' wealth will be a—if not the—seminal event of their lives. And the truth is that for many wealthy families, inheritance can become a negative and even destructive experience.

In traditional estate planning, somebody passes away and the family is instantly thrown into chaos. Sides are drawn and money is thrown at lawyers in order to keep more money. Like dynamite being handed to the unskilled and unprepared, instead of being handled safely and responsibly, the financial wealth blows up in everyone's faces due to a lack of preparedness—and all at a time where there is normally already a sense of loss.

The entrusted planning process, by contrast, empowers those with the desire to harness and guide positive growth and change through their descendants. Our clients do not hide the dynamite; they prepare their children to inherit wealth as well as the opportunities that come with it. Entrusted planning begins to unfold well before "the reading of the will" and beneficiaries are not surprised by the plan, they are prepared for it.

Entrusted planning sees the family as a team, one that's responsible for helping, educating, and communicating with each other. It seeks to align everyone, across the generations, to create a mentality and a set of meaningful goals that will be shared and passed along graciously, in addition to the financial assets.

EQUAL OPPORTUNITIES, NOT EQUAL OUTCOMES

In an effort to be fair and equal, too many parents attempt to engineer identical outcomes among their children. Entrusted families create a sense of voluntary connection and allow individual identity. The premise is that you must allow your children the freedom to make their own choices and to live with both the benefit and the burden of those choices. It is ultimately an issue of respect. It's critical that children be allowed to select their own paths to success.

Entrusted families set their children free to decide which paths they're going to take to accomplish their goals. They don't require children to carry on the family profession of being a lawyer, accountant, or doctor or to work in the family business. Parents should be mindful not to tie their identity with their children's successes or let their egos get involved in their accomplishments. In entrusted families, it's okay if a child doesn't have a PhD. The focus in entrusted planning is on the equality of opportunity and not equality of outcome. Entrusted families realize it's okay if the outcomes are different, because each child had the same opportunity.

One child may love the outdoors, spend time hunting and fishing, and find fulfillment as a Yellowstone National Park ranger. Another may be business-savvy and -directed and become an extremely wealthy, successful entrepreneur. Both lives have trade-offs. The second child is going to spend more time in the office under fluorescent lights, and the first is not going to have as much money in the bank. Entrusted families hold as a principle that each child can make a personal decision, accept the natural consequences of that decision, and understand that it represents an equality of opportunity.

This plays out in family businesses as well. The idea that all children should be treated fairly and equally should not extend to their positions in the business. Skills and abilities should be evaluated and used to put the right person in the right position. To do otherwise is to attempt to exercise control and engineer an outcome rather than let the children choose where they individually find satisfaction.

There are no guarantees that even with careful thought, planning, and execution you can create a family united in harmony. There are no guarantees that a child won't go off on a dangerous path. But to ignore preparing the family for inheritance increases the odds of disharmony and discord, and it makes negative events practically a certainty.

EASILY DESCRIBED AND UNDERSTOOD BY THE FAMILY

Most estate plans, especially plans for families with closely held businesses, real estate, or other significant assets, are inherently complicated and difficult to understand. Most of the complexity is necessary to accomplish the goals of tax efficiency and asset protection, and understanding every nuance of an estate plan might not be fully possible. But it should be completely possible for the family to know and be able to describe the values that the plan is based on and how their assets will be deployed to advance these values.

When you get to the point where you're putting your wealth behind a statement such as: "We are the Smiths. This is what we believe in, this is what we value, and this is what we do to impact the world," you're already well ahead of the game. Entrusted planning intends to get you to this point and beyond. This is its ultimate goal. You're not simply preparing your beneficiaries for a transfer of wealth. You're preparing them to carry on the family's values, philanthropic commitments, and larger goals. Entrusted families have goals that are both deep and broad. They're less interested in preparing their families to be rich and more interested in preparing them to manage, sustain, and carry on a rich legacy—the same legacy they have been building their entire lives.

PURPOSE DRIVES THE PLANNING AND PLANNING SUPPORTS THE PURPOSE

Unfortunately, too many families employ a traditional estate planning model that seeks to dump, divide, defer, and ultimately dissipate the parents' assets. Such planning does not take into account the family's values, culture, and objectives. In fact, as discussed above, the planning is likely generic, boilerplate, and doesn't take into account who the family wants to be or how to capture and pass on the human capital of the family. When the estate planning is reviewed, there is little within the planning that expresses who the family is and what they believe.

Instead, before drafting any estate planning documents, the family should first establish a clear vision, purpose, and direction; and develop leadership and a sense of community and collaboration intended to foster self-reliance. The estate planning could then be designed to advance the specific vision, purpose, and direction of the family and provide structure, resources, and governance to advance the family's values, principles, and objectives.

When a family first identifies its purpose, it makes it so much easier to then design the planning. The family and the estate planning can become aligned and work in harmony with one another. Each family member knows what is expected of them and how they can participate in the planning. Although the principal generation provides leadership, the process is collaborative. In other words, the family drives the estate planning and the estate planning supports the family. This is the essence of entrusted planning.

IMPLEMENTING AN ENTRUSTED PLAN

Developing beneficiaries who are entrusted and not entitled is a unique process that can and should be tailored to each specific family. The following seven disciplines, however, align every entrusted family and build connections across the generations:

Discipline 1. Entrusted families know who they are and what they believe. Being able to articulate who you are and why you're here is critical in three respects. The first is to create a greater sense of unity among the family members. The second is that it will drive your estate planning and align the use of your financial assets with your principles and values. Third, when you have clearly articulated values, those values can help your professional advisors as they work to align those values with your financial resources.

Discipline 2. Entrusted families prepare the family for the wealth and not just the wealth for the family. Once you know who you are and what you believe, you can begin to prepare beneficiaries in age-appropriate ways to steward and manage the resources of the family. This involves a focus on lifelong learning, having clear expectations, respecting each person's individuality, and focusing on providing equal opportunities and not equal outcomes.

Discipline 3. Entrusted families maximize the positive benefits of wealth and minimize the negative effects. As the amount of assets available to the beneficiary increases, an inheritance can support great success by making many options possible or ensure utter failure by allowing an heir to do nothing. The transfer of wealth goes from being a benefit to the point where it could actually detract from your family's principles and values. Entrusted families attempt to identify the high point of wealth transfer and benefit and then redeploy excess assets to opportunity transfer (flint and kindling) or social impact.

Discipline 4. Entrusted families focus on the means and not the ends; the flint and kindling, not the fire. Traditional estate planning generally passes on a lump sum with minor or few conditions; it focuses on the ends. Entrusted planning focuses on the means and allows the family members to create their own ends. It's based on the belief that the goal for successive generations should be self-sufficiency and independence. It focuses on the ability to replicate wealth and not simply on sustaining and consuming it. It's based on a simple but fundamental principle: a sincere belief that successive generations, when given sufficient opportunity and means, can and will achieve on their own. It's a positive and empowering perspective. It also allows for a much more meaningful conversation with the family, allowing them to see not just the success, but to appreciate the effort it must have taken to create such a roaring fire. Focusing on the fire, however, is negative. It questions the ability or fortitude of successive generations and is based on fear and disbelief in those future generations.

Discipline 5. Entrusted families are generous. Generosity can help bridge the generation gap as grandparents, parents, and children engage in active service together. Crafting a culture of generosity can be a powerful tool for creating meaningful relationships among family members who may otherwise have very different goals, values, and beliefs.

Discipline 6. Entrusted families preserve and protect wealth. There are three primary forces that erode wealth over multiple generations. The first is the division of assets among the generations. The second is transfer taxes and capital gains taxes. Third is business risks and third-party attacks. Preserving and protecting financial wealth requires an understanding of, and a solid plan for, counteracting these three forces.

Discipline 7. Entrusted families design and implement dynamic governance. In order to implement these seven disciplines for multiple generations, entrusted families steward their human capital as well as their financial resources by creating a family exchange zone—a collaborative handoff that occurs over time as the wealth creators are still alive. This deliberate and thoughtful transition allows descendants to participate in family governance while being mentored and guided by the wisdom and experience of the prior generation.

CONCLUSION

The key to successful wealth transfer is to focus on the beneficiaries and not on the financial wealth, and to design and develop planning with the end in mind. When you develop an entrusted plan, you provide your beneficiaries a holistic, measured, and specific opportunity for growth and self-efficacy. Your family can transition away from a state of volatility toward stability, from uncertainty to certainty, from complexity to simplicity, and from ambiguity to clarity. The goal of entrusted planning is to develop beneficiaries who are not entitled, but rather beneficiaries who are entrusted.

David R. York, Esq., CPA, is a managing partner at York Howell & Guymon in Salt Lake City, Utah. He earned a BS in accounting and a JD, both from the University of Utah. Contact him at david@yorkhowell.com.

REFERENCES

York, David R., and Andrew L. Howell. 2015. *Entrusted: Building a Legacy That Lasts*. Salt Lake City, UT: YH Publishing, LLC.

York, David R., and Andrew L. Howell. 2017. GRATs or Gratitude? *Trusts & Estates* (April 20). http://www.wealthmanagement.com/estate-planning/grats-or-gratitude.

CONTINUING EDUCATION

To take the CE quiz online, www.investmentsandwealth.org/IWMquiz