

# TRUSTS & ESTATES

The  WealthManagement.com journal for estate-planning professionals

By **Stacy L. Allred**, **Mary K. Duke** & **James E. Hughes, Jr.**

## Can Your Client's Family Live In the Estate Plan You Create?

Integrating financial capital requires a holistic perspective

In today's uncertain environment, one of the most powerful ways to gain insight to make more effective decisions is finding ways to "bring the future to the present."<sup>1</sup> Engaged in an intimate gathering with two dozen founders of family-owned businesses, a courageous third generation inheritor, let's call her Rosie,<sup>2</sup> was offering that opportunity. An introvert with a strong preference for privacy, what would have motivated her to move from comfort to courage and share her story? The answer turns out to be her desire to help others avoid the years of turmoil she experienced in receiving an inheritance.

Creating significant economic success, Rosie's grandparents worked closely with their team of advisors—attorneys, accountants and financial planners—to build an elaborate estate plan carefully designed to save taxes and control and protect financial capital. The natural byproduct of this sophisticated planning was a web of legal structures, interdependencies and complexities. A web that Rosie, her siblings, cousins and now their young children, the fourth generation, were saddled with.

In their quest to save taxes and control assets, like many of their financial peers, Rosie's grandparents and their advisors had overlooked the essential

question: Can our family live in the plan we create?

Rosie thoughtfully described the experience of having her life and identity disrupted when suddenly she became a beneficiary/owner of multiple trusts and limited liability companies (LLCs), with virtually no preparation. As she and her sister took on new roles in relation to their shared assets, it caused a painful family conflict between them because they weren't ready for their new responsibilities. While the conflict started mildly enough, with differing opinions on remodeling the shared family lake home, the sisters' lack of group decision skills, combined with unaddressed childhood hurts, fueled the conflict; the heightened emotions commonly experienced during the fragile time of transition further amplified the conflict. Spreading across the family enterprise, the conflict infiltrated the private family foundation, and intensity built as it permeated into the LLCs, increasing pressure to make time-sensitive decisions. The estate plan also had a destructive impact on her marriage.<sup>3</sup> Suddenly, she no longer needed to earn a living. The mandated trust distributions dwarfed the income she and her husband had been so proud of earning. Inheriting her grandparents' estate hit her family with the impact of a meteor!<sup>4</sup>

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### Status Quo

As we collectively speak with trusts and estates attorneys around the world, we're finding a resounding theme of significant importance: As estate plans spring into action, all too often, they fall short of the grantor's intent of harnessing the potential of financial capital to enhance individuals, families and communities. Dear reader, we ask you to pause here and deeply consider: Can your client's family live in the estate plan you create? Are the quantitative aspects balanced with the qualitative implications? How

might the family start now to prepare effectively to integrate the financial wealth they'll receive?

One attorney shared a story with us of how he had drafted estate plans for a decade before he had a front row seat to see how the plan played out. On seeing the real-life implications of the plan he helped create, he proclaimed, "there has to be a better way!" and began a journey of seeking a more holistic approach.

Going back to Rosie's story, she expressed to the assembled business owners how disappointed her grandparents would be if they were here to see the impact of their plan, especially the tearing down of family relationships.

Here's the catch: Many of the business owners weren't ready to hear this message. They sat in disbelief that the assets they had worked so hard to build and protect in trust could cause trepidation and adversity. They struggled to move beyond their vision of their dream and the incredible opportunity they intended it to provide. It was like trying to pour water into a cup, with a plot twist: The cup has a lid on it, and the water simply spills over. The lid (or barrier to hearing the message) needed to be removed first. Groundwork<sup>5</sup> was required.

### Growth or Safety?

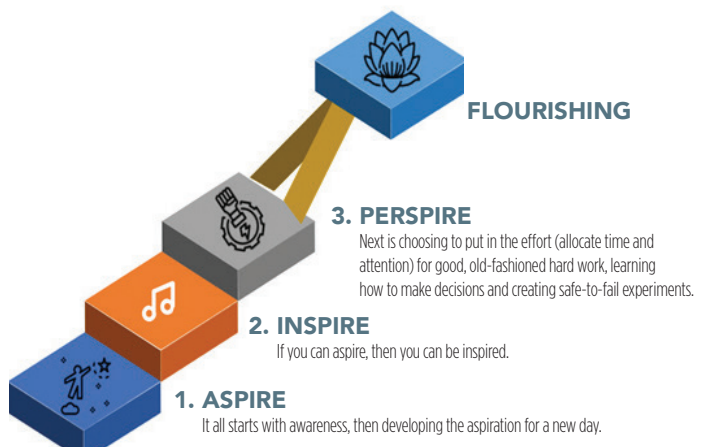
Psychologist Abraham Maslow says that in any given moment, we have two options, to step forward into growth or step back into safety.<sup>6</sup> As the challenge became clear, Rosie had both the determination and resilience to figure out a "both/and" approach: a way to step forward into growth and to begin to integrate this financial capital (and related structures) and "Trustscape"<sup>7</sup> into her life. In this process, Rosie allowed space for developing her own dream,<sup>8</sup> while honoring her grandparents and parents. Over the past decade, as she did the work, Rosie further leaned into her own dream, authentic to her and not in competition with the founder's dream. See "Steps to Create Flourishing," this page.

While Rosie's journey was both overwhelming and difficult along the way, she put in the effort and was resilient enough to figure out (sans one important sibling relationship) how to live within the plan. But many other inheritors choose to step back into safety, becoming passive participants in their Trustscape, often undermining their growth and development or, worse yet, like Rosie's sister, experiencing unmet expectations and defaulting to hurt and anger, ultimately making her way to mediation to separate "her share" from the family pot. Might the family battle have been minimized or avoided if a new perspective was taken and both the structural and the cultural aspects of the plan were attended to? What if the family and their advisors saw not just planning for the financial capital as worthy of attention but also

## Steps to Create Flourishing

*What's "the work"?*

While this will look a bit different for each beneficiary, for Rosie "the work" started with deep exploration and journaling as she developed awareness and started **aspiring** for a new way. She changed how she viewed her inheritance, moving from a burden lens to seeing her inheritance as a gift in support of building a journey to reach her potential, sparking **inspiration** and developing her own authentic dream. Next, she put in time and effort (**perspiring**) learning the terminology of trusts and partnership, to building an understanding of what it means to be a beneficiary. She worked with a coach to further explore her inner journey working through past family dynamics that had resurfaced with the estate transition. She put effort into developing a productive relationship with her trustee and strove to be an informed and thoughtful partner in family-owned real estate.



— James E. Hughes, Jr.

## FEATURE: ULTRA-HIGH-NET-WORTH FAMILIES & FAMILY OFFICES

viewed the qualitative capitals<sup>9</sup>—human, intellectual, social and spiritual (also called legacy)—important to carefully nurture and grow?

One of the fastest growing areas for estate-planning practitioners is family litigation over estate assets.

While these complex issues can't be fixed with agreements, rules and more structure alone, the combination of thoughtful structure and guidance (in this case, enhancing flexibility by including a buy-out provision following the practice of free choice to be partners<sup>10</sup> would have helped), with an active commitment to growing the intangible capital

together provide the possibility for a better outcome.

Rosie wasn't alone in the estate plan causing conflict. One of the fastest growing areas for estate-planning practitioners is family litigation over estate assets (politely referred to as "contentious trust practice").<sup>11</sup>

### Lack of Clarity

Drawing on the Italian play *Six Characters in Search of an Author* (Luigi Pirandello 1921), chaos ensues for these unfinished characters in search of an author to help finish their story. Likening the Trustscape to this, where is the wise, yet gentle, script to accompany the trust structures the estate plan creates? When do the players (beneficiaries) have an opportunity to learn and practice their role? Would they benefit from some direction? Does the script leave space for improvisation, allowing for the rising generation to bring in their voice and agility for all in the Trustscape to evolve to life's dynamic nature? See "Case Study Vignettes," this page.

### Case Study Vignettes

*How can we achieve a better outcome?*


<p><i>Suboptimal outcomes of well-intended gift and estate planning</i></p> <p><i>Read each case study vignette and consider:</i></p> <p><i>How might we elevate the gift and estate-planning process to achieve a better outcome?</i></p>	<p>Dynasty trust</p>	<p>Family-owned business</p>
	<p>Grandson (age 20) realizes the college major he selected no longer fits his plans. Frustrated, he drops out of college and takes up gaming for fun while living off trust distributions. The trustee (uncle) calls you wondering how to support moving from procrastination to building identity capital.</p>	<p>Inheritors and stewards</p> <p>Different philosophies around reinvesting in the business versus distributing the earnings result in heated arguments over distributions. Family members outside the business are questioning the salary of family operators as trust in each other erodes.</p>
<p>Prenuptial agreement</p>	<p>Qualified personal residence trust (QPRT)</p>	<p>Shared family vacation home</p>
<p>A beneficiary of a trust (that required a marital agreement to receive distributions) resentfully executed a prenuptial agreement.</p> <p>The resentment (which continues today) stemmed from the lack of having a voice and being heard.</p>	<p>Couple living in a home (primary residence) owned by QPRT, matures and can't understand why they must pay rent to their kids for their house.</p>	<p>Strong differing views on maintaining versus replacing original furnishings, skewed usage and no buy-out provision result in "trapped" family members threatening litigation over a treasured beach house with decades of memories.</p>

— Stacy L. Allred, Mary K. Duke and James E. Hughes, Jr.

## Call to Action

In today's increasingly complex environment, what actions can advisors who desire to take a more qualitative approach take? How might advisors and the families they serve broaden their lens to ask with curiosity and courage the big questions that will inspire the effort needed to achieve a more favorable outcome for their loved ones?

This is an invitation to our planning community to pause and rigorously ask the big questions.

Look for our follow up article in the December issue, in which we apply the idea of running a feasibility study to the plan you create and explore actions for positive impact, tying in bright ideas across our field. 

## Endnotes

1. To further explore the ideas of bringing the “future to the present” see Iris R. Firstenberg and Moshe F. Rubinstein, *Extraordinary Outcomes: Shaping an Otherwise Unpredictable Future*.
2. Compilation based on actual client experience, modified to protect confidentiality while maintaining integrity of the story.
3. For an exploration of the impact of fiscal diversity in couples, see Michele Mikeska, “Creating Balance in Financially Diverse Partnerships When She Has the Money,” *Trusts & Estates* (June 2020).
4. The analogy of the meteor was developed by James E. Hughes, Jr. See James E. Hughes, Jr., Susan E. Massenzio and Keith Whitaker, *The Cycle of the Gift: Family Wealth and Wisdom*.
5. To loosen up thinking, advisors can have “pocket questions” at the ready. We frequently use questions suggested by Theory U work of MIT Professor, Otto Scharmer: “Is that true?” “Is there another way to see the situation?” “What if the opposite was true?”
6. Maslow explains the origin of human cognitive needs: “Growth was seen as an endless series of daily choices and decisions in each of which one can choose to go back toward safety or forward toward growth. Growth must be chosen again and again; fear must be overcome again and again.” Abraham Maslow, *The Psychology of Science: A Reconnaissance*, 1966.
7. “Trustscape” describes a subsystem within the larger family system. Members of the trustscape are those connected by a trust agreement—trust creators, trustees, beneficiaries, trust protectors, committees and their advisors. Hartley Goldstone developed the idea of the Trustscape.
8. To explore the obstacles that members of new generations face and the importance of building one's own dream and self-awareness independent of achievements of predecessors, see James E. Hughes, Jr., Susan E. Massenzio and Keith Whitaker, *The Voice of the Rising Generation, Family Wealth and Wisdom* (Bloomberg Press, Wiley).
9. It was one of the authors (James (Jay) E. Hughes, Jr.) who first raised the ideas of intangible capitals in his 1991 book, *Family Wealth—Keeping it in the Family*. Jay challenges us to consider the family's balance sheet and recognize that the greatest asset on it is the family itself: its members and their relations, works and contributions.
10. Dennis T. Jaffe's research found that families who succeed across the generations had a practice of free choice to remain partners (with realistic buy-out provisions), then worked hard to make the family enterprise so compelling that family members chose to be a part of it. See Dennis T. Jaffe, *Borrowed from Your Grandchildren: The Evolution of 100-Year Family Enterprises*.
11. When Jay started practicing law, very few attorneys had a specialty in estate litigation. Today, “contentious trusts” are a global issue with large legal departments focused on family litigation over their estate plans. This can be problematic when drafting attorneys haven't had the opportunity to experience (and learn from) the aftereffect of the documents.



## SPOT LIGHT

### Black and White

*Neophyte* by Doze Green sold for \$10,625 at Heritage Auctions Urban Art Signature Auction on July 28, 2022 in Dallas. The multi-talented Doze Green was a member of the 1970's legendary breakdancing group Rock Steady Crew. During the same period, Doze Green was also a graffiti artist known for his subway tagging. He eventually took his art to canvas; his signature style often incorporates figurative abstraction and use of letterforms.

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