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It's Not Your Father’s Buick, Anymore:
Estate Planning for the Next Generation(s) of Clients

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Chapter 13

It’s Not Your Father’s Buick, Anymore: Estate Planning for the Next Generation(s) of Clients*

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Synopsis

¶ 1300 My Thesis
¶ 1301 A Few Demographic Factoids
¶ 1302 Marital Bequest and Nonmarital Trust Planning
¶ 1303 Do You Trust Your Spouse?
¶ 1304 Group Trusts
¶ 1305 Withdrawal Right versus Force Out Distribution
¶ 1306 The New Biology
¶ 1307 Adoption
¶ 1308 Adult Adoption
¶ 1309 Half-Bloods and Steps
¶ 1310 Nonmaritals
¶ 1311 Lapse
¶ 1312 Conclusion
¶ 1313 Appendices

¶ 1300 My Thesis

My thesis is that estate planning as I learned it 35 years ago has not changed in meaningful ways. Sure, the formulas that we use (like dividing a taxable estate into marital and nonmarital portions) that are driven by tax-informed results are different, because the tax results have changed. And there are some techniques and strategies that are common today that changes in the tax laws have spawned (like GRATs and

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* This article is an expanded version of Pennell, “The Joseph Trachtman Lecture,” 34 ACTEC J. 2 (2008).

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QPRTs). I'm actually pretty bored with much of that, and I have grown very tired of planning that someone trumped up (and sometimes patented) primarily for marketing purposes (to say nothing of race-to-the-bottom state law changes that represent state-legislated trolling for local trust business). What I mean about the lack of change is that the basic estate planning "boxes" that planners tend to put clients into, and the structure of the basic dispositive provisions that are in use, have not changed much since they were developed for the clients estate planners served before I became a lawyer, over three decades ago.

Back then, most of those clients were men in my father's generation, the World War II (referred to herein as the G.I.) generation. Our planning options today essentially reflect what those G.I. men wanted. I stress what the men wanted because, back then, the planning was driven by the bread winner, not by the bread server, and largely the plans we crafted did not give the surviving spouse — almost always the widow — any control to make meaningful changes. Demographically, virtually all the men in the G.I. generation are gone now, so estate planning today, especially for married couples, is for the next several generations. My observation is that it hasn't really adapted for those subsequent generations.

The G.I. generation had children who we know as the Baby Boomers (usually considered to be those born between 1946 and 1964). The generation between these two has defied definition. Some call it the "Silent" generation, because they didn't make much of a fuss about anything. A war era analog makes them the Korean War generation. My favored term is the Elvis generation (named for its most famous icon; you may prefer the Sandra Day O'Connor generation). Call it what you want, its members were born between about 1927 (too young to be involved in World War II) and 1945 (pre-Baby Boomer). They are the other group that is most likely to seek estate planning today (although they don't have the same wealth as the G.I. generation's beneficiaries — the Boomers).

Now, regarding my thesis: I'm confident that Baby Boomer clients are very different

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1 I thank Dennis Belcher for this terminology. What I mean by it is that estate planners identify client problems, evaluate the planning options (boxes) that might best address the situation, select the boxes that they expect to produce the best results, and then tailor those solutions to fit the client's needs.

2 This statement is not true, to the extent a marital deduction trust gave the surviving spouse a general power of appointment — before § 2056(b)(7) qualified terminable interest property (QTIP) trusts were legislatively created in 1981 — but almost all of those powers were testamentary and seldom were they exercised, or meant to be. After 1981 estate plans pretty much stopped giving even that much control to the surviving spouse, because everyone grew enamored with the special benefits available only with QTIP trusts (for example, partial and reverse QTIP elections), which did not require the general power of appointment. The G.I. generation of men liked QTIPS, and in the main their surviving widows did not object.

To a lesser extent the denial of control also was not true to the extent the surviving spouse was given a nongeneral testamentary power of appointment, although most of those powers only permit the spouse to change the shares of remainder beneficiaries but not divert the wealth to outsiders.

3 A survey of estate planners conducted in 2007 reports that their client base was 43% individuals in their 60s (i.e., born before 1947), 34% individuals in their 50s, and 13% individuals in their 70s. See 2007 Industry Trends Survey at www.wealthcounsel.com.
from their G.I. generation parents, for whom most of our current estate planning boxes were developed and refined. Boomer attitudes about wealth; about the role and abilities of women; about marriage, divorce, remarriage, and family; about education; and about work, careers, retirement, and about inheritance are all (remarkably) different from that of their parents in the G.I. generation. And I suspect that Boomers may not resonate with planning options that estate planners developed for the G.I. generation. This remains to be seen, because Boomers are only starting to become serious about estate planning as they finally inherit wealth. Most Boomers have not yet become orphans, in the sense that over 75% still have not lost their mothers.\(^4\) And their need for estate planning is just beginning to become clear, as they reach an age at which they qualify for Social Security retirement and their alumni newsletters report classmates who have died of natural causes. My observation is that estate planners have not yet reconsidered the planning boxes that were developed for a prior generation of clients.

I'm less sure about whether the Silent generation of married clients differs from the G.I. generation. True to their name, they are less vocal than the Boomers, and they are a much smaller cohort than the Boomers (having been born during the lean years of the Great Depression and World War II). Little has been written about them, and the demographic studies are pretty sparse. We know that they are not nearly as well educated as the Boomers.\(^5\) Women in the Silent generation were not as work-experienced,\(^6\) and they may not be as financially facile. Some studies suggest that they resemble the G.I. generation much more than they reflect Boomer attitudes, and perhaps their notions about wealth, family, control, and inheritance are similar to the

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Specific citation of authority for various demographic "facts" is not attempted and, in some cases, it is not directly available, the data being an extrapolation or interpretation of various sources. In that regard the representations herein are not scientific and should be regarded as only generally descriptive.

\(^5\) Less than half have a high school diploma, versus 87% of the Boomers; 53% of Boomers have some college; 31% have a degree. For Silents it was 38% and 21%. For the G.I. generation it was 7% and 19%.

\(^6\) In only 50% of Silent marriages were both spouses employed; Boomers exceed 70%.