



COMMITTEE REPORT: THE MODERN PRACTICE

By **Mark E. Powell** & **Andrea L. Kushner**

Starting Family Governance Conversations With Your Clients

Reduce risk of future resentment and dissension

Family governance is about family communication and family-focused decision making. Many estate planners shy away from anything that's overtly family-focused. There are no Tax Code sections or court rulings to frame the discussion, and the topic is often considered too touchy-feely, something we weren't taught about in law or business school. As a result, many clients end up with tax-efficient plans that become counterproductive—if not outright destructive—to the settlors and their future generations because the plans are either too restrictive or too generic.

Let's discuss why we think estate planners should add a few new tools to their tool belt. We'll also review the fundamental objectives of family governance work. Finally, we'll describe some common family governance tools and offer a single step that planners can take to introduce family governance ideas to their clients and continue to move their client relationships deeper.

Why Estate Planners?

Why do we think estate planners are uniquely positioned to help clients with these issues? Why do we think they should get comfortable talking about money and values with their clients even though the first few engagements may push them far out of their comfort zones?

We focused our practices on estate planning

because we wanted to help clients get ready for the future. This work fed our own ideas of ourselves and our personal objectives. We were in practice to work with thoughtful clients who wanted to know they were getting tax-efficient plans (because of our skills) that would be meaningful and relevant for generations to come (based on their objectives). We set out to make it possible for our clients to transfer both their wealth (through the embedded tax planning) and their wisdom. Many estate plans are focused solely on transferring wealth, and while that's a critical planning objective, most clients tell us it's just as important to pass on their knowledge.

During the past seven years, we've reshaped our approach to align more closely with our individual motivational factors, and our work has become significantly more personally fulfilling. We all have external matrices imposed by our firms, such as billings and collections or assets under management, but there's at least one thing you get out of your work that transcends these external factors because it makes you feel good. We encourage estate planners to identify those factors and intentionally shift their outlooks to bring these to the surface.

How do you do that? Our secret is simple. Ask *why* three times.

Here's a recap of many conversations we've had with estate planners who have realized their desire to go deeper with their clients.

Us: "Why, at this point in your career, do you want to head in this direction?"

Planner: "I want to have deeper relationships with my clients."

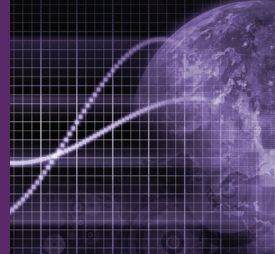
Us: "Why do you think that's important?"

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Planner: “Because they seem to want it, and everyone’s talking about this when I go to continuing education events.”

Us: “Why do clients want more of your time and energy?”

Planner (after hesitating and almost dodging the question): “Because they’ve come to value my advice, and helping clients is why I got into this work in the first place; it makes me feel like I’m doing something meaningful by helping them understand how to watch out for themselves.”

Now, we’re on to something. With some education about family governance techniques and the determination to change their talking path, this planner is going to be hard to stop because educating their clients personally fulfills them.

We’re both willing to help you accomplish this, and you can contact us if you’d like to discuss how to make this change. But as an industry, we need to pivot because too many good planners burn out after years of pressure over billables and collections. If more planners were working in ways they find meaningful, more clients would develop relationships through which they obtain advice they trust.

This isn’t true only about family governance. If planners want to become experts in Internal Revenue Code Section 409(a) issues or IRC Section 4945 private foundation excise taxes because they want their work to fulfill their intellectual curiosity, we say go for it. Both clients and the planners will benefit. Even if family governance isn’t going to feed your own interests, make sure you get to know someone who’s adept at this work. Even by simply making the suggestion and a good referral, you’ll help the family, and they’ll remember it.

Money and Values

The initial, but most difficult, step in launching a family governance project is getting clients to talk about their money objectively and their values passionately.

This step starts with creating a safe and healthy environment for communication among the family members. The goal is building trust in the planner, the process and the other participants. For example,

a 45-year-old daughter who harbors resentment over the fact that her father always took her brother to the gas station and filled up his gas tank before he drove seven hours back to college but never did the same for her won’t be able to participate freely until that resentment is surfaced and honored. During the surfacing process, hopefully the daughter will learn that her dad didn’t go to the gas station because he cared more about her brother; he did it because he was anxious about his son being on the road for a long stretch of time alone, and buying the gas, checking the wipers and filling up the tires were dad’s ways of dealing with his own anxiety.

How quickly should you expect to get to this very relatable feeling? This brings us back to asking *why* three times. We imagine the conversation might go something like this:

Us: So, John, we now know that Beth has an issue we need to discuss so she feels ready and able to participate fully in what we’re doing today. Do you remember why you often went to the gas station with Nate before he drove back to school?

Dad: Well, someone had to help him.

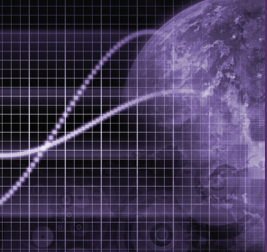
Us (after noting that Dad’s comment probably set Mom’s teeth on edge because it ignored her work supporting Nate and maybe set Nate’s teeth on edge by making him wonder if his Dad thought he was unable to prepare his own car): Why do you think he needed that kind of help?

Dad: He had to drive so far. It was risky, and I worried about it. I wanted to make sure he was going to be safe on that long drive.

Us: Would it be fair to say you were worried about his safety and helping him prepare the car made you feel less anxious? Could that be why?

Dad: Yes, you could say that. But, also, I wanted to spend as much time as I could with him because we missed him when he was away.

Us: It sounds like a couple of the things that motivate you include a responsibility to family



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and a desire for security. If it's okay with you, we'd like to get everyone to talk about both of these motivating factors.

Our last question wasn't a fourth "why." We had to help the daughter express and temporarily set aside the thing that was holding her back, and that moved the whole process along nicely. If no obvious roadblocks surface in our initial discussions, we use tidbits of what we learned to move toward a conversation about shared values. Often, guided exercises are the best ways to facilitate that discussion.

Whatever your net worth, when you send your money into the world, it's guided by your own motivational factors.

Also, our last question wasn't a foray into therapy. Neither of us are therapists, and we make that clear at the start. We're usually able to identify any minor contentious issues and work with them for planning purposes, but in some situations, we find the dysfunction is so powerful that planning really isn't possible until a trained therapist has helped the family resolve the dysfunction.

Our goal is helping the family identify its common motivators. Once we have the motivators in mind, we start working toward a joint vision of how the family pursues those motivations. Outlying factors can be incorporated. Assume everyone agrees that their joint motivating factors include integrity, leadership and loyalty, but one individual feels strongly about spirituality and another feels strongly about community. Those other factors can be incorporated into the structures that will eventually come from the process.

Now for the big leap: getting the family to talk about how their money can be a tool to pursue their motivations. It would be entirely counterproductive to the process if we pulled out a family balance sheet at this point and started discussing it. That would doubtlessly derail the family governance discussion and turn

the focus back to dollars and cents. We would have shifted back to a focus on transferring wealth and turned our backs on the idea of transferring wisdom. That would knock sizable holes in any trust we had built with the family to that point because we wouldn't be following the process we outlined for them.

A few more things need to happen before we get to discussions about actual assets.

First, we want to introduce the idea that money has a soul—the spender's soul. One of us once worked with a priest who was building planned giving and endowment programs at his church. In moments of passion, he would all but yell, "Show me your checkbook, and I'll tell you some things about your soul." He was a bit dramatic, but he was on to something. Whatever your net worth, when you send your money into the world, it's guided by your own motivational factors.

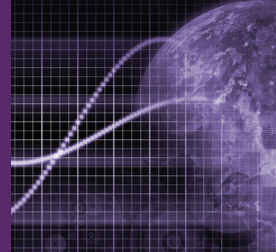
A middle class family that gives 10% of its income to charity is likely tightening its belt to make that happen. It's sending its contributions out into the world with an intention to accomplish good.

For wealthier families who give significantly to charity, the story isn't much different. They too are diverting funds that might, for example, go to paying down a mortgage, but they've made the decision to send some of their money into the world with an intention to do good.

For truly wealthy families, the ones who are likely to benefit from family governance work, their money and holdings may need much more management, especially at the older generation level. So, when we get to the money-has-soul discussion, we have to encourage participation from all parts of the family.

One technique we like is setting up fact scenarios, getting input and then putting out our *why* questions. For example, once you have a working set of shared values, ask what each individual would do with \$25,000 in service to those values. A round of *why* questions and the discussion it should engender among the family members will eventually put you in a place to ask a different question: From your combined wealth, what would you like to be able to spend in service to your shared values? Ten percent of the estate? Twenty-five percent of the estate? Fifty percent of the estate?

Family governance isn't only about family philanthropy, although that topic served this part of the discussion nicely as an introduction. What if one of



the family's shared values is educating the existing and future younger members of the family? The question is the same. Would the family be willing to set aside 10%, 25%, 50% or some other amount from its combined wealth to accomplish this goal?

There will likely be more than one shared value. How would the family balance them? Suppose the family also identifies "impact" as one of its shared values. How do the family members define the values, and how do they set objectives for each value? One value may require significant resources, but the other requires a change in attitude or behavior. Our best advice: Set a goal of some sort and keep moving knowing that the family governance process should result in regular review. If the shared family values or the current means of measuring achievement change, that's acceptable. In fact, that's expected because one objective of family governance is keeping plans relevant. Adapting to changed circumstances is a skill we've heard mentioned regularly and frequently when an older generation member starts talking about the role of wisdom.

This brings us to the common family governance structures and tools, but there's one more issue we need to consider before selecting structures.

Simple is Better

Effective family wealth transfers can require a variety of coordinated structures, but before we summarize the common tools, we want to make an important point about complexity.

You should always meet the client wherever they are. It isn't useful—and can often be destructive—to insist that every family needs every one of the tools discussed below. Each family is different, and each family governance plan should be unique to the family.

The following are factors that suggest a governance plan can be effective even if it isn't complex:

- The family consists of only two generations
- Governance planning is just beginning
- Much of the family's wealth is liquid
- Family members and/or their smaller family units already engage in philanthropy individually
- Decisions are still being made individually

By contrast, the following factors indicate that a governance plan needs to be more complex:

- More than two generations will be part of the governance
- Family planning already includes full or partial governance structures
- Operating businesses make up a large part of the family's wealth
- Two or more generations are involved in coordinated family philanthropy
- Decisions are already being made collaboratively

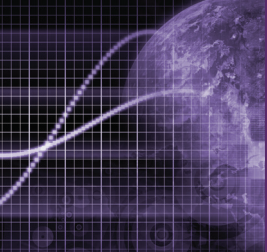
The mission statement helps guide parents in child rearing and sets out expectations for family conduct.

Structures and Tools

As we discuss the common family governance structures and tools, let's assume we're working with a family consisting of: (1) grandparents who are both 77 years old; (2) a 55-year-old son who's never been married and is private about his dating life; (3) a recently divorced 52-year-old son who's working hard to maintain a relationship with his 20-year-old college student daughter; and (4) a married daughter who turns 50 next year, whose son (out of college, settling into a sales career, newly married and expecting his first child) and daughter (in her last year of college with plans to pursue a graduate degree in mathematics) are well loved, but whose husband is still viewed with suspicion even after being married to the daughter for over 25 years. The grandfather was CEO of a public company before he retired, and the grandmother raised the kids while personally managing their money. Right now, the grandparents' estate is worth about \$75 million.

Mission Statement

A mission statement expresses what a family is about—its purposes, shared goals and common values. Once crafted (and until it's changed), this statement will serve as the family's North Star. All important decisions, including those made by the family's advisors, should be made in consideration of this guiding document. Although the creative process may be guided and facilitated, every family member who's willing to



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participate in the process should do so. Family members bond through the process. The statement helps guide parents in child rearing and sets out expectations for family conduct.

In that family, who should participate? Both grandparents, all three children and even the grandchildren who are able and willing. That means the facilitator has to balance input from eight people who are at very different points in their lives. We know that one son may be reluctant to share much. The other son may see this as a way to build the relationship with his daughter by engaging together in the process, but he may decide he has too much on his plate to participate.

One job of the family council is monitoring the mission statement's relevance and initiating regular reviews of it.

There's no magic answer to whether spouses should participate. Here, we have one long-term marriage and likely disquiet from the daughter and both of her children if her husband isn't involved. The other spouse is relatively new to the family. Unless there's clear consensus that spouses should help craft the family mission statement, we can use the governance structure to involve spouses in either the family meetings or the family council.

One final thought about mission statements. They're not written in stone. It usually becomes obvious when newly active family members feel uncomfortable with some part of an existing statement. One job of the family council (discussed below) is monitoring the statement's relevance and initiating regular reviews of it.

Family Meetings

Family meetings are often two- or three-day events that combine family activities with education and family business discussions. All adult family members, their spouses and younger family members over a specified age attend and participate. They're often

called "family retreats." We find they're most effective if they happen once or twice a year. They provide opportunities to strengthen relationships and develop family cohesion, which is especially important if the participants don't otherwise see each other regularly.

A small group develops the agenda for the retreat, which often covers several of these topics:

- Family history and storytelling
- Education events, which often are led by family advisors such as CPAs, trusts and estates lawyers, investment advisors and philanthropic consultants
- Estate plan reviews that give an opportunity for those who'll be beneficiaries to understand how the estate plan is meant to provide relevant benefits for many years to come
- Family philanthropic discussions and activities
- Team-building exercises

For smaller families, these events can be short and informal and held at a regular family gathering, such as at Thanksgiving. As the family evolves or grows, or as more people become interested in the goal of family governance, the complexity of the retreats can keep pace.

Family meetings deserve focused planning by a small group. These aren't easy to plan. They can't be pulled together a week before the meeting. The planning process is another way of building family cohesion. In our client's family, think how much camaraderie could develop if the silent uncle works with the niece dealing with his brother's divorce, and his new niece-in-law, to plan a family meeting. Checking in with a grandparent along the way and eventually circulating a proposed agenda for comments provide unique and powerful opportunities for interacting with other family members.

Family Council

The family council is the heart of a family governance structure. Some of its responsibilities include:

- Creating long-term development programs to help younger generations learn how to manage family assets and participate in family council work
- Setting investment policies, reviewing investment performance, evaluating investment managers and,

- if appropriate, selecting new or additional managers
- Leading discussions of family business ownership and operation, including questions about family member employment by the business
- Ensuring the family business is operated in ways that serve the mission statement
- Establishing open lines of communication with the family business corporate board of directors and bringing corporate issues to the family when appropriate
- Developing a family dispute resolution process
- Establishing family philanthropic activities
- Assessing estate plans, working with trustees in planning appropriate and meaningful distributions and evaluating trustee performance

These aren't light topics, but they're critical to the family's long-term success and require regular and frequent meetings.

The council's structure can take many forms. In smaller families, it might include all adults and children over a specified age. In larger families, the council may be a subgroup of family members nominated to serve by the larger group. In complex families, there may be subcouncils that focus on topics such as developing future heirs, building decision-making structures, managing wealth and engaging in philanthropy. Developing the next generation of family council members by involvement on subcouncils can be highly effective.

Family Constitutions

In complex family enterprises, a family constitution may be useful in coordinating other family governance work and in encouraging family awareness of and adherence to the various documents and policies adopted through the governance planning process.


A family constitution isn't a legally enforceable document, but it provides accountability if someone heads away from the mission statement and the values described in it. If several family members veer from the mission statement, it's time for the family council to initiate a review of the mission statement and the family constitution to update one or both documents if needed.

The family constitution might address topics such as the following:

- How family members should treat each other and

- how they should participate in the broader world
- How family members should use the family's resources to enrich society and benefit others
- How ownership of the family business will succeed to future generations and how new owners are expected to handle the responsibility of being an owner in the business
- How in-laws might participate in family governance
- How the family has decided to protect the family business in the event of a divorce or death
- How vacation homes and recreational equipment, such as boats or RVs, may be used by family members
- How much interest the family has in philanthropy and some guiding thoughts on reaching these objectives

Discuss Governance Issues

Not every family needs to implement family governance structures, and many families that should, won't. It's hard to believe that clients would knowingly implement a plan that has a significant chance of creating rifts in their families. Even if full family governance planning isn't appropriate, select family governance issues should be discussed with nearly every family (both settlors and beneficiaries) during the estate-planning process. Planners know the signs, and those who address the appropriate issues will greatly reduce the risk of future resentment and disension. 

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