

# 7 Estate Planning Lessons from “Beyond the Grave”

## Trust and estate lawyer emphasizes the importance of anticipating inheritance problems before families implode

When it comes to distributing inheritance, sometimes money is thicker than blood.

**Jeffrey Condon** knows that from first-hand experience.

Co-founder of Condon & Condon law firm, Jeff has practiced in the field of trusts and estates since 1987. Since then, he’s collected a lifetime worth of cautionary tales of inheritance plans gone bad.

**Jeff** recently updated his book, “**Beyond the Grave: The Right Way and the Wrong Way of Leaving Money to Your Children (and Others),**” which he co-authored with his late father and law partner, **Gerald**.

## What they don’t teach in law school

The title of his book is derived from the common squabbles and conflicts that can occur after parents pass away and leave adult children to divide their inheritance. “These are the real-life situations they don’t teach in law school,” says Jeff.

“**Beyond the Grave**” was praised by **The Wall Street Journal** as “*the best Estate Planning book in America.*” It serves as a road map to help financial advisors and their clients navigate potential mine fields hidden within the language of otherwise well-meaning estate plan documents.

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A frequent speaker on the topic of living trusts and estate planning, Jeff uses his decades of knowledge to help:

- Shield inherited wealth from creditors, ex-spouses, the IRS and, sometimes, the heirs themselves.
- Ensure that an estate owner’s inheritance instructions are carried out.
- Reduce internal conflicts that may surface when siblings feel cheated over their share of the family pie.

David, so taken with the simple elegance of the book, started collaboration with the author. This paper highlights their initial overview discussion.

**David Richman:** Congratulations on the success of your book and for making the topic of estate planning so accessible to so many.

**Jeff Condon:** Thank you for having me, David.

**David:** *“Beyond the Grave” offers a unique perspective on the inheritance process. As I understand it, you and your late father worked together and experienced many familial conflicts when dealing with estate planning clients. So you wanted to write a book of do’s and don’ts, so to speak?*

**Jeff:** That’s right. I want to help families and their financial advisors learn to anticipate the good and bad consequences of their wealth distribution choices. When working with clients to construct an estate plan, financial advisors — myself included — must not let the next generation of heirs inherit a tangled mess because of short-sighted thinking. A periscope from the grave can help financial advisors avoid poor financial decisions by anticipating areas of potential turmoil before they occur. I’m not asking readers to practice law, but to understand that 95% of any solution is recognizing the problem in the first place. You’ll hear me say that a lot.

**David:** Among other information, your book suggests programming inheritance plans to target seven challenges or goals. In the time we have today, I’d like to touch on each goal.

**Jeff:** Let’s do it.

## **Lesson 1: Preventing family conflicts**

**David:** *I love and dread the concept in your book that you really don’t know your children until they begin to pick through their inheritance. Explain that.*

**When money is involved, sometimes family loyalty goes out the window.**

**Jeff:** It’s not pleasant to hear, but your children are no longer your children when it comes to the inheritance arena. They are just people dividing money. When money is involved, sometimes family loyalty goes out the window. My father and I came across situations where brothers and sisters had literally not spoken in years because of the mere perception that inheritance equalization was not achieved. So goal number one is programming your estate plan to minimize possible unrest among heirs.

**David:** **I know some people will think, “Who cares how our children might react to our inheritance plan? We will be dead!”**

**Jeff:** That’s certainly a viewpoint held by many. Advice columnist Ann Landers often wrote about estate planning problems. Her view was: “If your kids are unhappy, let them be. They’re lucky to get anything.” My view is this: Your children are your most precious possessions. They will walk the earth after you’re gone. If your inheritance plan goes sour, so too might their memory of you and their relationships with

each other. I realize it's not an appetizing topic, but in my practice it's important to take a sober look at personal issues that could come back to haunt siblings after the death of their parents.

**David:** *Why not simply distribute inheritance equally among the surviving children and move on?*

**Jeff:** That would seem to make sense. But even an equal-distribution approach could inadvertently create hurt feelings.

**David:** *In fact, in "Beyond the Grave," you offer an example of best intentions gone wrong.*

**Jeff:** The seminal incident began years ago after my dad drafted a living trust for a lovely couple, whom I name Arthur and Heidi in the book. The trust language simply stated that when Arthur and Heidi died, their three offspring would get equal shares of their parents' estate. Sound fair?

**David:** *Fair.*

**Jeff:** I thought so, too. Anyway, Arthur dies first and Heidi follows a few years later. Fast forward and all three grown children and their spouses are sitting in my dad's office. Initially, it was like a tribute to the parents with tears and memories about what great people Arthur and Heidi were — their generosity and how much they loved their grandkids.

**David:** *Then, you wrote, the conversation turned dark.*

**Jeff:** Suddenly, one of the daughters chimes in and says

"Yeah, mom and dad were very generous. But it seems they were more generous with" — and she points at her brother. Apparently, the parents had funded the brother's undergraduate and medical school expenses. In comparison, the sister had gotten married shortly after high school and did not pursue higher education. In a matter of minutes, the mood went from a love fest to very icy because of the perception that the gifts under the inheritance plan were being distributed unfairly.

**David:** *How did that experience affect you?*

**Jeff:** My dad and I became more sensitive to the perceptions surrounding unequal lifetime gifting. Ever since, we've made sure to discuss with our clients the option of adding some kind of equalization calculation to their living trusts. Keep in mind that during their lifetimes, most parents are not

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keeping score of the money they give their children. In their minds, they're just helping their kids in a time of need. But the reality is, some children are keeping score. And this perceived imbalance could lead to bad blood. It's important for financial advisors to at least recognize the concept of equalization. To ignore it is a failure for the family.

**David:** *So you're suggesting advisors be sensitive to each family dynamic and to think about what really matters most: love for one another.*

**Jeff:** Yes. As a financial advisor, you have a duty to shine a light on potential pot holes down the road when possible. When I'm redoing an old trust, the section I revisit first deals with successor trustees. [A successor trustee is the person or institution that takes over management of a living trust when the initial trust owner or grantor dies or becomes incapacitated in some way. A successor trustee acts in the same capacity as the executor of a will.]

Often, adult children are named successor trustees. Here's the problem: I've come across many living trusts that name only one or two children among several as the person who will carry forward decisions regarding their parents' estate.

David: And that's a red flag?

**Jeff:** Based on my experience, the fastest way for families to break up is when parents don't name all their children as successor trustees.

**David: *Why would parents exclude certain children in the first place?***

Jeff: For any number of benign reasons. A child might not have been born when the trust was first written. Some parents figure it's just easier to choose one successor, probably the oldest, and not bother the rest. Perhaps one child has certain business skills. Maybe one is a CPA. Regardless, I feel the expertise of one sibling over another is outweighed by the need to maintain family harmony.

**David: *So you would raise the issue with your clients before drafting language that might exclude other siblings from the distribution process?***

**Jeff:** Absolutely. Let's say a surviving parent has five kids, but only one or two are designated to carry out the terms of the trust. As a fiduciary, it's imperative to ask why the other children are not named in the trust document. Unless there's a super good reason to exclude a child, I promise you that the siblings who are out of power will make life miserable for the siblings in power.

## Lesson 2: Saving heirs from themselves

**David:** We just touched on why a child might be excluded as a successor trustee. Your goal number two is programming your inheritance plan to protect inherited wealth from adult children who may have personal problems.

**Jeff:** Sadly, not everyone is responsible and conscientious. Once children inherit wealth, it becomes vulnerable to their personal life scenarios and risks, including addictions, financial immaturity, divorce, legal exposures and medical problems, including inadequate health insurance coverage. If your clients are taking efforts to protect their money and property while it's in their hands, why not take some time to protect it while in their kids' hands?

**David:** *How do you protect people from their own shortcomings?*

**Jeff:** We can shield assets by advising clients to consider the benefits of a protection trust, a term my dad and I coined in our book in 1995. A protection trust builds a wall around inherited assets, allowing heirs to enjoy their share while helping insulate wealth from third-party claims.

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**David:** *What can a protection trust do?*

**Jeff:** When you place assets, especially real estate, in a protection trust, you're essentially tying a string around your child's finger as a reminder that this is a family legacy. It's not our job as parents to make your children's spouses wealthy. In essence, you're telling your children that upon their death hopefully many years from now, we want you to leave any remaining assets to our grandchildren. In that way, a protection trust can help transfer property from one generation to the next and beyond.

Getting back to the original idea, if an heir has a debilitating problem like drugs or alcohol addiction, or a mental or physical challenge that leaves them unable to make sound financial decisions, then we could include some form of protection mechanism or language that perhaps names a third party to manage and control certain assets for certain heirs.

## Lesson 3: Carrying out orders

**David:** In your book, you identify a slew of situations where successor trustees were not carrying out the specific terms of their parents' living trust. That leads us to goal number three, programming your inheritance plan to ensure it will be carried out.

**Jeff:** A living trust is a private arrangement. There's no court looking over the shoulders of each successor trustee to make sure instructions are being carried out as specified by the grantor. Who would even think of deviating from their parents' last wishes? It's not only a legal obligation for the successor trustee to follow the map left by the grantor, it's a moral obligation.

**David:** Your book describes a cross-generational tale where one successor trustee, a son, did not follow his father's express inheritance wishes, which, in turn, created a flap with his own son years later. Please tell that story.

*How do you know if your kids are going to carry out your last wishes in the manner you intend? You don't.*

**Jeff:** We had a situation where grandpa left \$10,000 to his grandson — his only son's son — upon turning age 25. The grandson was 19 when grandpa died. So six years pass and one day I get a call from the grandson saying that he turned 25 the other day, but when he went to his dad, who was also the successor trustee, he was told the inheritance money was gone. It wasn't that dad was a bad guy. Not like he took the money and went to Mardi Gras. But during the intervening years, dad's attitude was that his son's portion of the inheritance was all part of the family's funds. So he spent it on basics — food, clothing and shelter. He thought he was doing a good thing by using the inheritance for family purposes. But that's not what grandpa had intended.

**David:** And affected parties are not always family members.

**Jeff:** We've had several situations where clients leave a portion of their estate to nonprofit organizations. And years later the kids come to my office and ask, "Do we still need to give to that charity?" And I say, yes, of course. The point is, how do you know if your kids are going to carry out your last wishes in the manner you intend? You don't. So what do you do? When drafting an inheritance plan, financial advisors should make a habit of asking clients: How important is it that certain provisions of your distribution plan are carried out to the letter? The situation may call for an alternative or specialized third-party trustee. In any case, by bringing it up, you've raised the level of awareness for your clients.

## Lesson 4: Protecting the surviving spouse

**David:** I'm guessing this next one may hit home for many financial advisors. Goal number four is programming your inheritance plan to protect assets for your surviving spouse.

*After the death of a spouse, situations have arisen where the surviving spouse actually loses control of the estate's assets.*

**Jeff:** After the death of a spouse, situations have arisen where the surviving spouse actually loses control of the estate's assets. I know this may sound crass, but I've known situations where children pressure the surviving spouse— typically mom — for an early inheritance so they can enjoy their wealth now, even though that's not what mom and dad had in mind.

**David:** You tell the story of a widow living in an expensive area in California and her children pressure her to move into a small condo to save money.

**Jeff:** Some kids come up with inventive ways to part mom from her assets. They say, "Mother, if you don't sell your house now, we may not be able to afford to take care of you if you get sick." Mom may feel vulnerable and capitulate to such pressures. And once money gets into the kids' hands, it's not coming back.

**David:** You tell a story about children trying to con mom by saying, "If you give us the house now, you'll save on estate taxes."

**Jeff:** Yes. And, of course, that's nonsense because the federal estate tax exemption is so high (\$5.43 million in 2015) that in all likelihood there's not going to be any estate taxes due. I've heard children say, "Mom, you should transfer the house to my name so we can avoid probate court after you're gone." As a sign of goodwill, mom might add her children's names to certain house documents. But that poses potential downsides. If a child enters bankruptcy or develops some kind of creditor problem, mom could lose her house. In reality, all mom has to do is create a living trust to avoid probate.

**David:** And if the surviving spouse remarries, you've got a whole new family to deal with.

**Jeff:** I'm glad you brought that up, David. There are no more complex problems than those pitting the interests of the first kids against the interests of the second spouse. If dad has a living trust that leaves all his assets to his second wife for life, the kids have to wait for their legal stepmother to die just as they would if their birth mother were alive. In other words, only after the death of the second wife, does everything go to the kids of the first marriage.

**David:** That could create an awkward arrangement for all.

**Jeff:** Exactly. As a financial advisor, you have to contend with the real-life inheritance problems they don't teach in law school. A poorly structured estate plan can make life uncomfortable for everyone. Without naming names, I've known children from first marriages who couldn't wait to see their fathers'

second wives die so they could receive their inheritance. They see the house, they see the assets, but they can't touch them until this "stranger" passes away.

**David: We haven't really discussed solutions in detail today.**

**Jeff:** That's right. Each solution will be unique to each situation. In the previous case, a possible solution might be to terminate the economic connection between the surviving second spouse and the first-marriage kids by giving both sides something to walk away with after dad's passing. That way they're not living with each other — figuratively speaking — for the next 20 years.

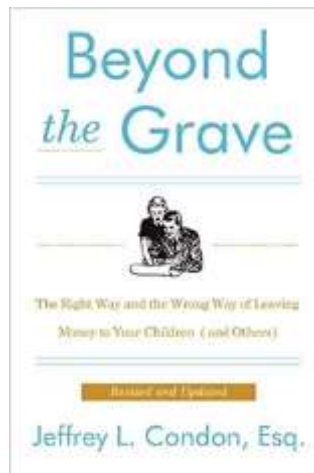
## Lessons 5 and 6: Keeping money from Uncle Sam

**David: Let's combine lessons five and six, which relate to programming your inheritance plan to prevent the IRS from getting multiple bites at the apple.**

**Jeff:** There are two sides of estate planning. So far we've talked about the human side, which makes up about 95% of "Beyond the Grave." The other 5% deals with the money side, which essentially is avoiding probate. It also involves making sure that more of your wealth goes directly to your children and grandchildren and less to the IRS. That is what we call estate tax planning.

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## Lesson 7: Avoiding probate court

**David:** Let's wrap up with goal number seven, programming your inheritance plan to avoid probate court.

**Jeff:** Probate is the court-supervised process of transferring assets from the dead to the living. A simple solution is to place most of your valuable assets, especially real estate, in a living trust. Like a will, a living trust spells out your clients' desires with regard to assets, dependents and heirs. A living trust lets you avoid the more costly and time-consuming probate process. In my mind it's a no-brainer that you should create a living trust, especially if you own residential and business properties, automobiles, stocks, bank accounts and even treasured pets. A living trust places your last financial bequests in the hands of your beloved children and not some remote government entity.

**David:** Jeff, I want to thank you for your insights on estate planning. Do you have any parting words?

***Trusted fiduciaries can leave a profound impact on families.***

**Jeff:** Trusted fiduciaries can leave a profound impact on families. The main thing I hope to communicate today is that we, as financial advisors, be aware of the potential hidden conflicts when meeting with families and drafting inheritance plans. Most of the time your clients will appreciate you anticipating areas of concern and suggesting solutions on their behalf before emotions heat up.

Finally, I want to leave with this mantra: 95% of any wealth solution is recognizing the problem up front. If you help your clients identify and address these problems within their living trusts and other inheritance documents, you've done your job.



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