

**A MODERN FAMILY: HOW THE BOOMERANG
GENERATION AFFECTS ESTATE PLANNING AND
HOW PRATITIONERS CAN APPROACH THESE
ISSUES**

Comment

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I. A HYPOTHETICAL TO CONSIDER

Bob and Ann are in their early sixties and plan to retire. They have two daughters: Sally and Molly. Sally is thirty, married, and working as an engineer. Molly is twenty-seven, married, has two children, and is currently unemployed. Sally has a successful career and owns a home with her husband. Molly earned her associate’s degree, has worked jobs here and there, but cannot settle into a job because she struggles with alcoholism. Molly also has a rocky relationship with her husband. Oftentimes, they

separate and Molly moves in with her parents. Bob and Ann's children took different paths in life; that is not to say that Sally and Molly are treated differently, but Molly has a harder time getting along with the family because of her unpredictable circumstances in life. As Bob and Ann discuss their will, they have some serious considerations to take into account: Should their children be treated equally when it comes to the division of their property? Of course, right? What if Molly's situation improves in the future, what if it worsens? What if Molly spends her inheritance on her addiction? What if her addiction leads to medical problems? What if Molly's husband takes all of the inheritance? Does Molly know how to manage an inheritance? Since she lives with her parents at times, and her parents support her if not all but most of the time, should that affect the division of the inheritance?

The following piece will address how practitioners can help their clients based on the idea that there is a new generation to plan for. This is a new generation to plan for because young adults are not reaching "adulthood" quite as quickly as society has previously expected them to.¹ There are many different reasons, theories, and statistics that explain why this generation is growing up at a slower pace.² Regardless of whether these reasons persuade you or you simply believe that young adults are unrealistic, it is important to get to know the generation an estate planner may be planning for to provide the best service to clients. Coming from a twenty-something who has admittedly, not quite grown up yet, I believe that these theories, data, and explanations are not simply a phase or a result of laziness, but rather represent a new generation that highly values individualism. This individualism will lead to scenarios such as starting a career as a blogger, deciding never to marry, or taking until thirty-five to discover what career path is desirable and not feeling bad about it.

The following piece will explain who this new generation is, why we are the way we are, and how to plan for the new and challenging scenarios a practitioner may face when estate planning. There will be different options as to how a practitioner can approach different scenarios and why it is important to consider different trusts. Finally, this piece will explain how practitioners can approach estate planning for a new generation and why it is important to get to know clients and their individual situations.

II. WHAT IS THE BOOMERANG GENERATION AND WHY DO WE CARE?

Traditionally, adulthood and the transition to adulthood has been defined as reaching five major milestones: 1) completing school; 2) leaving home; 3) becoming financially independent; 4) getting married; and

1. Robin Marantz Henig, *What Is IT About 20-Somethings?*, N.Y. TIMES MAGAZINE (Aug. 18, 2010) http://www.nytimes.com/2010/08/22/magazine/22Adulthood-t.html?pagewanted=all&_r=0.

2. *See id.*

5) having a child.³ In the early 1970's, most young adults, or "baby boomers" today, reached many of these milestones by twenty-one to twenty-three years old.⁴ Today, reaching these major milestones not only takes longer for young adults to reach, but some young adults may not reach these milestones at all.⁵

The "Boomerang Generation" is a concept unique to the adults between the ages of eighteen to thirty-five.⁶ It is a generation of young adults living at home long past college graduation and taking longer to reach adulthood.⁷ About "16% of U.S. households are now multi-generational, [with] 48% of middle-aged adults providing financial support in 2012 for a child over age the age of eighteen."⁸ Nearly one in five adults who are part of the boomerang generation are receiving financial help from their parents.⁹ But why not receive help from the welfare system of mom and dad when you are not unlike the rest of your generation:

One-third of people in their 20s move to a new residence every year. Forty percent move back home with their parents at least once. They go through an average of seven jobs in their 20s Two-thirds spend at least some time living with a romantic partner without being married.¹⁰

There is also a lack of necessity for young adults to transition into adulthood.¹¹ Most of the public agrees that, "it's harder for young adults to reach many of the basic financial goals their parents may have taken for granted."¹² The majority of the public, at 82%, believe that finding a job is more difficult for young adults today than it was for their parents' generation.¹³ People believe it is harder to save for the future, pay for college,

3. See Henig, *supra* note 1.

4. See Henig, *supra* note 1. Explaining that by 1960, "seventy-seven percent of women and sixty-five percent of men had, by the time they reached thirty, passed all five milestones." *Id.*

5. See Henig, *supra* note 1. Reaching these milestones is, "[somewhat] of an anachronism; it implies a lockstep march toward adulthood that is rare these days some never achieve all five milestones, including those who are single or childless by choice, or unable to marry even if they wanted to because they're gay." Henig, *supra* note 1.

6. See generally Henig, *supra* note 1.

7. See Henig, *supra* note 1.

8. Karen Ciegler Hansen, *The Modern Family*, WEALTH MANAGEMENT, (Aug. 7, 2013) <http://www.wealthmanagement.com/estate-planning/modern-family>.

9. Catherine New, *Adult Allowance: One in Five Young Adults Receives An Allowance*, HUFF. POST (Mar. 20, 2012, 1:18 PM) http://www.huffingtonpost.com/2012/03/20/adult-allowance-boomerang-generation_n_1367168.html.

10. See Henig, *supra* note 1. "[A]s young people remain untethered to romantic partners or to permanent homes, going back to school for lack of better options, traveling, avoiding commitments, competing furiously for unpaid internships." *Id.*

11. See Henig, *supra* note 1.

12. *Young, Underemployed and Optimistic: Coming of Age, Slowly, in a Tough Economy*, PEW RESEARCH, (Feb. 9, 2012) http://www.pewsocialtrends.org/2012/02/09/young-underemployed_and_optimistic/.

13. See *id.*

or buy a home.¹⁴ The tough economy and recent recession is just one reason the public believes that the boomerang generation has it tough: “Many experts agree the economy, including rising debt from student loans and the high cost of living, is the driving force motivating these kids to live at home.”¹⁵ It is not just the tough economy and hard economic times explaining the reasons why young adults do not feel the need to flee the coop.

The relationship between parents and children is another leading reason why young adults feel more comfortable moving back home.¹⁶ Baby boomers, or the parents of the boomerang kids, have been eager “to have a more honest, authentic, intimate connection with their children than most of them enjoyed with their own parents.”¹⁷ For example, about 85% of recent and current college graduates will be moving in with their parents, but these statistics have been rising for some amount of time, “doubling between 1980 and 2008, long before the economy tanked.”¹⁸ In other words, because relationships between parents and children today are different compared to thirty years ago, there is not as much of a social stigma associated with young adults living at home:

The reason more kids move back home isn't just because they can't afford to move out or even because they can have sex under the parental roof—something their parents never could. Baby boomers have been enabling their kids' extended adolescence for over two decades, spurred on by their desire to have a more honest, authentic, intimate connection with their children than most of them enjoyed with their own parents.¹⁹

This somewhat new type of bond between parents and children can also be explained by how the baby boomer generation has developed.²⁰ High divorce rates mean that the parent/child relationship has strengthened due to the bond between a single parent and child.²¹ Developments in technology and the need to always be connected mean that parents and children are more likely to always be in touch.²² Because both young adults and their parents have

14. See *id.* “[A]t least seven-in-ten say it's harder now to save for the future (75%), pay for college (71%) or buy a home (69%).” *Id.*

15. See Robi Ludwig, *How Long Is Too Long for Boomerang Kids to Live With Their Parents?* HUFF. POST (Aug. 14, 2013, 3:03 PM), http://www.huffingtonpost.com/robi-ludwig/how-long-is-too-long_b_3748365.html.

16. See Jane Adams, *Why Kids Don't Leave Home—It's Not (Just) the Economy*, HUFF. POST (May 31, 2012, 10:34 AM), http://www.huffingtonpost.com/jane-adams/boomerang_b_1558793.html.

17. *Id.*

18. *Id.*

19. *Id.*

20. Jeffery N. Pennell, *The Joseph Tractman Lecture—Estate Planning for the Next Generations of Clients: Its not Your Fathers Buick Anymore*, 34 ACTEC JOURNAL 2, 2 (2008).

21. See Adams, *supra* note 16.

22. Adams, *supra* note 16.

developed relationships unlike anything our society has ever experienced, there is more of a draw to remaining close with our families.²³

Yet, not all agree that the boomerang generation is faced with a terrible economy or that we want to live at home and have our mom do our laundry forever. Some experts say the boomerangs are indecisive, lazy, and dependent.²⁴ For example, when it comes to the economy, if boomerangs complain that dream jobs are not in reach and that is why they are slow to start adulthood, baby boomers answer with the idea that being twenty-five and unemployed is a lot better than being fifty-five and unemployed in today's harsh economic times.²⁵ Or when boomerangs blame their student loans as a reason why the bank of mom and dad is still in use, the baby boomers will say that young adults should be grateful they have a college degree, considering it was not something everyone had thirty years ago.²⁶ Perhaps it is simply that young adults are optimistic and hopeful of the possibilities that the future holds while parents can no longer identify with that "sense of possibilities" feeling: "The dreary, dead-end jobs, the bitter divorces, the disappointing and disrespectful children . . . none of them imagine that this is what the future holds for them."²⁷ Whatever the reason, whether it is the harsh economic times, the change in social culture, or the over-optimistic view of possibilities, parents have to take notice of what is happening with young adults today.²⁸

III. WHY THE BOOMERANG GENERATION NEEDS SPECIAL ATTENTION: THIS IS NOT A ONE-SIZE-FITS-ALL APPROACH

Regardless as to why young adults today are such a unique case to examine when it comes to estate planning, the reality is that when considering how to plan for the future of these young adults, it is certainly not a one-size-fits-all approach.²⁹ Whether we like it or not, children are not as financially mature as society would have wanted or expected them to be thirty years ago.³⁰ "[I]t's time to leave the academic estate-planning tax tower and get down into the trenches to find out what's really happening in our clients'

23. See Henig, *supra* note 1.

24. See Adams, *supra* note 16; see also Henig, *supra* note 1.

25. See Krista Goral, *Why Millennials Should Stop Complaining and Start Living*, HUFF. POST (Feb. 27, 2013, 3:13 PM) http://www.huffingtonpost.com/brazen-life/why-millennials-should-st_b_2768178.html.

26. See *id.*

27. See Henig, *supra* note 1. "More than positive or negative feelings, what Arnett heard most often was ambivalence—beginning with his findings that 60 percent of his subjects told him they felt like both grown-ups and not-quite grown-ups." See Henig, *supra* note 1.

28. See Henig, *supra* note 1.

29. See Hansen, *supra* note 8.

30. See Ron Lieber, *When the Fledglings Return to the Nest*, N.Y. TIMES (July 11, 2009) http://www.nytimes.com/2009/07/11/yourmoney/householdbudgeting/11money.html?pagewanted=all&_r=0.

lives.”³¹ It is important to discover the unique circumstances of each family, even if clients may be embarrassed or ashamed to explain, because the unique circumstances will greatly affect how each estate is planned.³² Planning the estates for young adults is not just about the black letter law, it is about establishing a trustworthy attorney-client relationship for the client to feel comfortable explaining their unique family dynamics.³³ Practitioners should consider whether certain estate planning wisdom is still good advice for a new generation of clients.³⁴

A. Designing the Plan

The typical estate plan includes an inheritance that will be passed down to each child equally.³⁵ While the mechanics of estate planning have not changed significantly, the clients have.³⁶ Referring back to the hypothetical at the beginning of this piece, how Bob and Ann’s inheritance will be planned has not necessarily changed, but because Sally and Molly are so different, the execution of the estate plan has to be flexible and particular.³⁷ Estate plans have to consider the “what if’s”: What if Molly needs medical treatment for her addiction?³⁸ Should Molly receive more money than Sally because Molly has more “what ifs”?³⁹ Should Sally and Molly know they are being treated differently because of their circumstances?⁴⁰ These conversations and potential results should be discussed with the client to plan for every possible circumstance.

31. Hansen, *supra* note 8.

32. See Hansen, *supra* note 8. “We also need to create an atmosphere of trust with our clients, where they can be encouraged to identify, explore and articulate their concerns, which go far beyond tax planning.” *Id.*

33. See *id.*

34. See Jeffery N. Pennell, *The Joseph Trachtman Lecture—Estate Planning for the Next Generation(s) of Clients: It’s Not Your Father’s Buick, Anymore*, 34 ACTEC JOURNAL 2, 2 (Summer 2008). “My sense is that estate planners have not paid much attention to this demographic development. . . . I say “It’s Not Your Father’s Buick, Anymore” because the estate planning vehicle that my father thought was appropriate or desirable is not what I expect today’s generation of clients to embrace.” *Id.* at 4.

35. See *id.* The mechanics to planning an estate has not changed significantly: “My thesis is that estate planning as I learned it 35 years ago has not changed in meaningful ways. [. . .] What I mean about the lack of change is that the basic estate planning “boxes” that we tend to put clients into, and the structure of the basic dispositive provisions that we use, have not changed much since they were developed for the clients estate planners served before I became a lawyer.” *Id.* at 2.

36. See *id.*

37. See *supra* Part I.

38. See *supra* Part I.

39. See *supra* Part I.

40. See *supra* Part I.

IV. THE SCENARIOS THE ESTATE PLANNER MAY FACE

The following scenarios will describe just a few situations a practitioner may face when planning for the boomerang generation.

A. *The Spendthrift Child*

The spendthrift child is one that demonstrates behavior of uncontrolled spending, poor financial planning, and credit card debt.⁴¹ This is a potential boomerang generation young adult because the child will not be financially independent and will probably still be relying on parents for financial support.⁴² The emerging adulthood theory suggests that this young adult is very much represented throughout our generation because the spendthrift child may be going through multiple jobs, partners, and apartments.⁴³ In other words, there is little sense of stability in a boomerang's personal and professional life.⁴⁴ This child will spend without consequences because if something bad happens, mom and dad will be there to bail the child out.⁴⁵

Parents of these children struggle with the balance between being supportive of their children and teaching their children to be financially independent.⁴⁶ What help are parents really giving by constantly helping the child that continuously cannot pay rent? How can they change the child's behavior?⁴⁷ What if only one child has these tendencies? What are the issues associated with a plan that gives an inheritance outright to one child while the inheritance for the spendthrift child is in a special trust?

One way to plan for a spendthrift child is to create restrictions by implementing discretionary distributions.⁴⁸ For example, distributions could match a child's earned income.⁴⁹ This could encourage the spendthrift child to make more money, plan finances better, and motivate the child to pay off debts.⁵⁰ Because the distribution of a trust is dependent on the child's actions, this trust would be beneficial for a child that cannot manage finances.⁵¹ A plan that distributes money like so would even represent fairness to all children receiving the trusts: each child has the incentive to earn an income

41. See Eric A. Manterfield, *Incentive Trusts for Children*, 53 RES GESTAE 25, 25 (June 2010).

42. See *id.*

43. See Henig, *supra* note 1. These privileged children experience a "double-edged sword" because, "[o]n the one hand I am so blessed with my experiences and endless options, but on the other hand, I still feel like a child. I feel like my job isn't real because I am not where my parents were at my age." Henig, *supra* note 1.

44. See Henig, *supra* note 1.

45. See Henig, *supra* note 1.

46. See Manterfield, *supra* note 41.

47. See Manterfield, *supra* note 41.

48. See Manterfield, *supra* note 41.

49. See Manterfield, *supra* note 41.

50. See Manterfield, *supra* note 41.

51. See Manterfield, *supra* note 41.

that would match a trust distribution.⁵² Returning to our hypothetical, if Molly takes issue with the fact that Sally receives more of her share in a trust, Molly can change her circumstances by working towards her income matching the trust distribution.⁵³

To encourage certain behaviors for a spendthrift child, the trust instrument could provide for mandatory distributions if the child meets certain behavior or financial.⁵⁴ For example, if parents want a child to pay off debts, the child may receive a fixed distribution if the child's debts fall below a predetermined level for a set period of time.⁵⁵ That way, the parents can determine if the child's behavior is changing as a result of an incentive.⁵⁶ Additionally, the parents could provide for a cash distribution pending the child's spending habits.⁵⁷ This idea may be appealing to parents because it encourages the children to change their habits, but still does not abandon the children if debts get out of control.⁵⁸

B. The Trouble Child

Perhaps one child has exhibited troublesome behavior and the parents do not want the child to waste an inheritance.⁵⁹ Referring back to our hypothetical, Molly has an abusive partner, she may be an addict, and she is currently out of work.⁶⁰ Molly's parents want to support her, but they also want to encourage her to have a career and focus on getting healthy.⁶¹

If parents determine that one child would benefit from a spendthrift trust, should that child be aware of the option of being treated differently?⁶² For parents that want their child to change, it is probably best that the child is aware that she will not receive the inheritances in a lump sum or may not receive it at all if her behavior does not change.⁶³ Parents should plan for this child by providing a list of specific, quantifiable behaviors that are unique to the child.⁶⁴ Otherwise, an incentive that a child cleans up their act can lead to an unclear outcome as to what cleaning up one's act is.⁶⁵ For example, in the case of our hypothetical, Bob and Ann can provide a contingency that if Molly successfully completes rehab and stays sober for one year, her parents

52. See Manterfield, *supra* note 41.

53. See *supra* Part I.

54. See Manterfield, *supra* note 41.

55. See Manterfield, *supra* note 41.

56. See Manterfield, *supra* note 41.

57. See Manterfield, *supra* note 41.

58. See Manterfield, *supra* note 41.

59. See Manterfield, *supra* note 41.

60. See *supra* Part I.

61. See *supra* Part I.

62. See Manterfield, *supra* note 41.

63. See Manterfield, *supra* note 41; see also *supra* Part I.

64. See Manterfield, *supra* note 41.

65. See Manterfield, *supra* note 41.

will reimburse the cost of rehab plus a determined amount for changing her behavior.⁶⁶ Or Bob and Ann can provide a contingency to Molly that if she holds a job for a year or decides to continue on with her education, she will receive a trust that contributes to her new efforts.⁶⁷ But, what happens to the money if Molly is not motivated by these contingencies?⁶⁸ What if things get so terrible for Molly but she has not fulfilled the wishes of the contingent trusts and there is no help for her?⁶⁹ Obviously, these are tough issues but something that parents will ultimately have to decide.

C. The Abusive Partner

While an abusive partner is something that children may not necessarily have to face, there are many ways in which a child can be in an abusive relationship.⁷⁰ Whether it is physical or emotional abuse, an abusive partner can take away the inheritance parents intended to pass to children in several ways.⁷¹

Parents may not think their child is entering into an abusive relationship, but considering the increase in divorce rates, a relationship may become abusive in some form and a parent may want to provide for the beneficiary in the case of a divorce or separation.⁷² Considering that the average divorce costs between \$15,000 and \$20,000, should parents provide for their children in case a separation occurs?⁷³ Would a parent want a large portion of an inheritance paying for a child's divorce? Whether in a community property state or an equitable distribution state, a gift or inheritance to a child is considered his separate property, but how does a parent protect the child's inheritance from a partner trying to take advantage of such inheritance? The parent may do as follows:

The estate planning documents might call for assets to be distributed in installments, either when the child reaches a set age or at set intervals after the death of the surviving parent. Those documents might then provide that the set distributions are not made (the money stays in trust) if the spouse of the child refuses to sign an irrevocable disclaimer of any interest in the property about to be distributed. Obviously, once the inheritance is

66. *See supra* Part I.

67. *See supra* Part I.

68. *See supra* Part I.

69. *See supra* Part I.

70. *See* Manterfield, *supra* note 41.

71. *See* Manterfield, *supra* note 41.

72. *See* Manterfield, *supra* note 41.

73. Laura Seldon, *How Much Does the Average Divorce Really Cost?* HUFF. POST (May 30, 2012, 3:49 P.M.) http://www.huffingtonpost.com/galttime/how-much-does-the-average_b_3360433.html.

distributed to the child, it is up to him or her to keep those assets separate from other marital property, in order to maintain their “separate” status.⁷⁴

Parents may not want to think or realize that divorce or abuse can happen to their child, but it may be important for parents to set up and educate their children about how to plan for bad situations and how children can protect themselves.⁷⁵

D. The Child Facing Divorce

Parents should consider the fact that their child could lose an inheritance in the case of a divorce.⁷⁶ Regardless of whether the beneficiary resides in a community property or an equitable distribution state, when a gift of inheritance is co-mingled with property of a marriage, a child may lose half of their inheritance to the property shared by spouses. For example:

If an inheritance is distributed outright to a grown child who later goes through a divorce, it is likely that half of the inheritance will be awarded to an ex-spouse If those same assets were still in a trust for the benefit of the divorcing child, on the other hand, the laws of many states protect those assets from the claims of ex-spouses and creditors, so long as the child is not his or her own trustee.⁷⁷

A client has the ability to distribute assets in installments in order to protect against this situation.⁷⁸ For example, assets can be distributed either when the child reaches a particular age or at determined set intervals after both parents are dead.⁷⁹ While a client may not necessarily feel comfortable considering bleak situations that a child may face, clients should also be informed that it could be a mistake to give their child broad discretion in how their trust can be accessed.⁸⁰

E. The Child with a Substance Abuse Problem

Another issue parents should plan for and consider is whether their child may experience a substance abuse problem. This is an important issue when a parent decides how to distribute an inheritance: should the child get the inheritance all at once, or in increments?⁸¹ If a child has a substance abuse

74. Manterfield, *supra* note 41.

75. See Manterfield, *supra* note 41.

76. See Manterfield, *supra* note 41.

77. See Manterfield, *supra* note 41.

78. See Manterfield, *supra* note 41.

79. See Manterfield, *supra* note 41.

80. See Manterfield, *supra* note 41.

81. See Manterfield, *supra* note 41.

problem and gets an inheritance in a lump sum, is there a fear that the child will spend the money too fast?⁸² Can a parent make a contingency on a child getting sober, or is this against public policy?⁸³ A parent may not be likely to make a child get sober by threatening that child with an inheritance, but perhaps parents can make an incentive for the child: if you go to rehab, a trust will be set up to cover the cost.⁸⁴

F. Supplemental Needs Trust

Some parents will need to provide their child with a supplemental needs trust because the child has a mental or physical disability.⁸⁵ It is important for an estate planner to know whether this trust needs to be established, as it will be different for an inheritance set up for a child that does not have a disability.⁸⁶ These trusts are also important because if a child has a disability that needs to be provided for, parents cannot necessarily depend on federal medical coverage to adequately cover the needs of a child:

They promote a higher level of support and care to the beneficiary of the trust than is available from government benefits alone. An aging society, the prevalence of functional disabilities, and the structure and limitations of the health insurance system in the United States have made the supplemental needs trust an important tool.⁸⁷

Compared to a spendthrift trust, this is not for a child who may rack up credit card debt; this is a trust for a child who needs and may continue to need private support in order to survive:

[T]he beneficiary of a supplemental needs trust has a severe, often permanent, disability that prevents her from supporting herself adequately through employment. The beneficiary . . . is usually one who is struggling through life despite daunting odds, considerable physical and/or cognitive limitations, and insufficient public support. [It] is structured so that the beneficiary qualifies for the widest array of government benefits including basic income support, medical care, and other basic needs.⁸⁸

Supplemental needs trusts are not necessarily easy to establish because states have different laws concerning the validity of these type of trusts.⁸⁹

82. See Manterfield, *supra* note 41.

83. See Manterfield, *supra* note 41.

84. See Manterfield, *supra* note 41.

85. See Joseph A. Rosenburg, *Supplemental Needs Trust for People With Disabilities: The Development for Private Trust in Public Interest*, 10 B.U. PUB. INT. L.J. 91, 94–98 (2000).

86. See *id.*

87. *Id.* at 97.

88. *Id.* at 109.

89. See *id.*

While each state has different laws concerning supplemental needs trusts, courts follow these factors to determine the intent of the creation of the trust:

- 1) [W]hether the intent of the creator of the trust is clear based on the trust language, or whether it is necessary to examine the circumstances surrounding the creation of the trust;
- 2) [H]ow the particular form of trust is treated under the relevant state trust statutes and the eligibility rules for the government benefits at issue; and
- 3) [W]hether there are superceding [sic] principles of public policy that dictate a particular result.⁹⁰

It is important that the creator of these trusts establish what the availability and discretion is for the beneficiary in order to avoid litigation.⁹¹ The trustee is either granted sole discretion or discretion to use the trust as appropriate.⁹² Estate planners should look to the laws of their state to determine what language will express the intent of the trustor because it can severely affect the beneficiary's discretion to access the trust.⁹³ In the Ohio Supreme Court case, *Bureau of Support Dep't of Mental Hygiene and Corr. v. Kreitzer*, the court decided that a trustee that was granted "sole and absolute" discretion to provide for "care, comfort, maintenance and general well-being" meant that the state would provide for the beneficiary and the trust could only be accessed if the state did not provide for the beneficiary.⁹⁴ This ultimately meant that, "[it] would never be necessary to provide basic support to a beneficiary who received subsistence government benefits."⁹⁵ This was most likely not the intent of the grantor, since the trust granted "sole and absolute" discretion to the beneficiary.⁹⁶

Conversely, in *McNiff v. Dep't of Pub. Welfare*, a Minnesota court focused more on the grantor's intent.⁹⁷ The court held that the beneficiary was not entitled to government benefits because the determined intent of the grantor was to provide the beneficiary with health care needs: "The underlying theme embraced by the court is that public assistance is a charitable benefit that is provided through the largesse of government, rather than because of an entitlement."⁹⁸

90. *Id.* at 110.

91. *See id.*

92. *See id.*

93. *See id.*

94. Rosenberg, *supra* note 85 (quoting, *Bureau of Support Dep't of Mental Hygiene and Corr. v. Kreitzer*, 243 N.E.2d 83 (Ohio 1968)).

95. Rosenberg, *supra* note 85, at 112.

96. *See* Rosenberg, *supra* note 85, at 112.

97. *See* Rosenberg, *supra* note 85 (quoting *McNiff v. Dept. of Pub. Welfare*, 176 N.W.2d 888 (Minn. 1970)).

98. Rosenberg, *supra* note 85.

Some states, including Texas, limit the amount a trust can contribute to beneficiaries depending on their condition.⁹⁹ If a person has mental retardation or a mental illness, a trust is limited to \$50,000 for an individual that lives in a state hospital or a client of a mental health center.¹⁰⁰ The amount limit for an individual residing in a care facility with mental retardation is \$250,000.¹⁰¹ An amount awarded above these limits is considered available for the beneficiary's support.¹⁰²

Whatever state laws an estate planner must follow, it is important that an estate planner knows the state law to avoid litigation and provide for their client.¹⁰³ Obviously the supplemental needs trust is not for everyone, but if it is part of a family's plan, it is important that the trust be considered to assure that an individual may get the money needed to live a fulfilling life: "Supplemental needs trusts create opportunities for independent living, innovative rehabilitation and therapy, employment, and other activities that give life meaning."¹⁰⁴

G. *Sole Trustee v. Co-Trustee*

Parents can decide to distribute individual trusts to each child, or an entire inheritance to all of the children. There are benefits and downfalls to each approach depending on the family situation. If, for example, adults have a child with a substance abuse problem, or a child with an abusive partner, perhaps it would work better for a family to have the children co-trustee an estate so that one child does not take advantage of an inheritance. On the other hand, the children may not all agree or may not get along to the point where all the children can decide how to use and distribute the trust.¹⁰⁵ Disagreement among the parties when it comes to a co-trustee situation is a sure recipe for litigation.¹⁰⁶

When considering the boomerang generation, it would not be surprising to assume that a co-trustee system among siblings could lead to disputes. Consider a child that starts their career and their future later than another child; siblings could then disagree as to how a trust should be distributed. Perhaps the child who is not yet married and who has not settled into a career needs money to pay for rent, compared to a sibling that is married with a career and is not ready to access such an inheritance.

99. See Rosenberg, *supra* note 85.

100. See Rosenberg, *supra* note 85.

101. See Rosenberg, *supra* note 85.

102. See Rosenberg, *supra* note 85.

103. See Rosenberg, *supra* note 85.

104. Rosenberg, *supra* note 85.

105. See Manterfield, *supra* note 41.

106. See Manterfield, *supra* note 41.

H. Gender Roles

Considering the gender of your children is an important consideration because gender roles play a significant part in our society.¹⁰⁷ For example, what if a father wants to pass on the successful business to his children and his son is eager to take over the business, while his daughter is content being a stay-at-home mother to her family. Should the son's inheritance be less than the daughter's because the son will make more money in the business? Also consider the fact that women are not paid as much as men.¹⁰⁸ What if parents believe that their daughter should have more of an inheritance compared to their son because based on statistics, she may never earn as much as him? This idea is highlighted more by the fact that most of the boomerang generation is receiving degrees and waiting longer to settle down, emphasizing that even if women have the same education and qualifications as men, women still may never earn as much as men.¹⁰⁹

An important factor to consider if gender is an important aspect to a client is the idea that gender classifications cannot go against public policy.¹¹⁰ With respect to restrictions on a particular gender, recent court cases have concerns with violations of the equal protection clause and Title VII.¹¹¹ Parents can avoid these litigation issues by issuing restrictions on gender if private parties are involved:

However, because these only prohibit the state from discriminating on the basis of sex, there must be state action involved with the trusts in order for them to violate these provisions, and where the discrimination is purely private, the restriction is valid. Some courts have found state action where there was a significant degree of involvement by state officials in the administration of the trust, but found purely private discrimination where state officials were only involved in the process and procedure for distributing the trust funds.¹¹²

While these kinds of provisions may apply to beneficiaries as a group and not an individual, it is still important to consider how these trusts need to be construed if gender is a factor to a client.¹¹³

107. See generally Tracy A. Bateman, *Validity of Charitable Gift or Trust Containing Gender Restrictions on Beneficiaries*, 90 A.L.R. 4th (1999).

108. See Caroline Fairchild, *Nearly 100 Percent of American Women in Jobs That Typically Pay Men More: Analysis*, HUFF. POST (Apr. 9, 2013, 3:19 P.M.) http://www.huffingtonpost.com/2013/04/09/women-earn-less-than-men_n_3046461.html. "97 percent of full-time working women were in jobs that typically paid men more." *Id.*

109. See *id.*

110. See Bateman, *supra* note 107.

111. See Bateman, *supra* note 107.

112. Bateman, *supra* note 107.

113. See Bateman, *supra* note 107.

Gender may be an important consideration when parents are gifting to children because our culture may promote a sense that women are inferior to men.¹¹⁴ Women have a lower self-esteem compared to men:

The social scientists also report lower self-esteem among women today. How should we understand that, and what planning might it predict? My own sense is that women have been treated less equitably: often they spend less time in leisure pursuits and, notwithstanding that they work more than men, they are paid less.¹¹⁵

Women may have a lower self-esteem compared to men because women receive less pay, women feel they are not as qualified as men, or women are not pursuing the same career goals as men.¹¹⁶ This is not to say that men and women should be treated differently, but it is important for parents to understand that gender stereotypes still thrive.¹¹⁷ For example, consider Suzie, who always wanted to go to law school, but she married young and started a family so her career goals have been stalled. Suzie's younger brother, Sam, has decided to go to law school after receiving his undergraduate degree. Should Suzie and Sam's parents establish a trust to help Suzie if she decides to pursue law school? If she never goes back to school, should an inheritance be split equally between Suzie and Sam? Is it fair if Suzie and Sam have an equal distribution of an inheritance if Sam will make much more money after completing law school? These are important questions to ask and consider when advising clients.¹¹⁸

V. HOW THE BOOMERANG GENERATION AFFECTS PARENTS

A. *Fifty Is the New Thirty*

Practitioners must consider the idea that retirement and aging is not what it was thirty years ago.¹¹⁹ People are living longer, retiring later, embracing youth, and not as likely to be grandparents at age fifty.¹²⁰ According to a recent poll, when asked, "If you could skip time and live forever in good health at a particular age, what age would you live at?"¹²¹ Most Americans

114. See Pennell, *supra* note 34.

115. Pennell, *supra* note 34.

116. See Pennell, *supra* note 34.

117. See Pennell, *supra* note 34.

118. See generally Fairchild, *supra* note 108.

119. See generally Annie Hauser, *Americans Living Longer AND Healthier*, WEATHER.COM (July 29, 2013, 2:33 PM EDT) <http://www.weather.com/health/americans-living-longer-and-healthier-20130729>.

120. See *id.*; see also Diane Mapes, *America's Favorite Age? It's 50, New Poll Says*, TODAY HEALTH (Sept. 15, 2013, 10:50 A.M.) <http://www.today.com/health/americas-favorite-age-its-50-new-poll-says-8c11144329>.

121. See Mapes, *supra* note 120.

answered fifty years old.¹²² People believe that as they age they have more control and greater well-being compared to the lack of confidence in their twenties and thirties.¹²³ As the baby boomers age, they are also smarter and wealthier.¹²⁴

If the baby boomers are living longer and retiring later, does that mean that future generations will have more money because parents are earning more?¹²⁵ Not necessarily.¹²⁶ On one hand, Americans are retiring later because of factors such as the 2008 recession, and the changing norms about the value of work.¹²⁷ But on the other hand, because the boomerang generation is different than previous generations, baby boomers should plan on providing for their children longer than usual.¹²⁸ If boomerang's are taking longer to find a career, get married, and have children, that may mean that boomerang's will rely on their parents longer.¹²⁹ A client must also consider the possibility that a child who is in the early stages of adulthood may consider going back to school, changing careers, or other big life events:

Today young people don't expect to marry until their late 20s, don't expect to start a family until their 30s, don't expect to be on track for a rewarding career until much later than their parents were. So they make decisions about their futures that reflect this wider time horizon. Many of them would not be ready to take on the trappings of adulthood any earlier even if the opportunity arose; they haven't braced themselves for it.¹³⁰

Parents need to decide whether they want to plan for these unexpected events in their children's lives and how it may affect retirement planning and their own quality of life.¹³¹

Baby boomers must also consider that if they are still planning on retiring at age 50, they will have to save more for retirement because they will probably live longer.¹³² In 1990, the average age to retire was fifty-seven and in 2013 the average age to retire rose to sixty-one.¹³³ When considering

122. Mapes, *supra* note 120.

123. See Joan Raymond, *Michelle Obama's big day: 5 things to love about turning 50*, TODAY HEALTH (Jan. 16, 2014, 8:51 AM ET), <http://www.today.com/health/michelle-obamas-big-day-5-things-love-about-turning-50-2D11929577>.

124. See *id.*

125. See Alyssa Brown, *In U.S., Average Retirement Age Up to 61*, GALLUP (May 15, 2013) <http://www.gallup.com/poll/162560/average-retirement-age.aspx>; see also Hauser, *supra* note 119.

126. See Brown, *supra* note 125; see generally Lieber, *supra* note 30.

127. See Brown, *supra* note 125. "[W]hereas the average current retiree stopped working at age 61, those still working expect to work well beyond that age. The average nonretired American currently expects to retire at age 66, up from 60 in 1995." Brown, *supra* note 125.

128. See Lieber, *supra* note 30.

129. See Henig, *supra* note 1.

130. See Henig, *supra* note 1.

131. See Lieber, *supra* note 30.

132. See Brown, *supra* note 125.

133. See Brown, *supra* note 125.

retirement funding, Americans must balance when they expect to retire and when they can actually retire.¹³⁴ Is it realistic for Americans to think they can retire in their fifties when, “[I]t is likely that the average retirement age will continue to increase in the years ahead, as more nonretirees expect to delay their retirement past age 65[?]”¹³⁵ As reaching the milestone of fifty feels better than ever, clients must prepare for changes in their children’s lives and how to maintain their current standard of living.

B. Retirement Planning

Parents will have a difficult time deciding how to plan for a unique generation and their own future. If parents are required to take away from their retirement fund to help a child of the boomerang generation in the future or even today, it can severely affect quality of life.¹³⁶ “The amount that baby boomers have saved is insufficient for retirement; and there are serious questions about how much our government will be able to financially provide in the future.”¹³⁷

Because baby boomers have not sufficiently saved for retirement, it is difficult to imagine baby boomers providing for the children that are taking longer to start “adulthood.”¹³⁸ Because children are taking longer to reach the five major milestones: “1) completing school; 2) leaving home; 3) becoming financially independent; 4) getting married; and 5) having a child,” parents may be expected to provide for their children longer than expected.¹³⁹ If parents really cannot afford to provide for their children for an extra few years without ruining their own savings and plans for their future, an estate planner should be prepared to discuss options.¹⁴⁰

In *How Long Is Too Long for Boomerang Kids To Live With Their Parents*, Robi Ludwig discusses five non-negotiables for setting guidelines between parents and children: “1) Agree upon a reasonable rent payment; 2) Use this opportunity to save money; 3) Contribute to household chores and errands; 4) Focus on finding a job, even if it’s for the interim; and 5) Parents, understand the importance of helping your child become independent.”¹⁴¹ Clearly a tough balance exists between respecting your child’s time to reach

134. See Frank Newport, *Americans’ Biggest Financial Worry Is Funding Retirement*, GALLUP (May 6, 2013) <http://www.gallup.com/video/162206/americans-biggest-financial-worry-funding-retirement.aspx>. “61% saying they are worried about having enough money for [retirement].” *Id.*

135. See Brown, *supra* note 125.

136. See Hansen, *supra* note 8.

137. See Hansen, *supra* note 8.

138. See Hansen, *supra* note 8.

139. See Adams, *supra* note 16.

140. See Hansen, *supra* note 8.

141. Lieber, *supra* note 30.

adulthood and “rob[bing] retirement funds to pay for a boomerang child’s groceries.”¹⁴²

C. Charging Rent

Parents in these situations can consider charging rent to a child who moves in back home as an adult.¹⁴³ “[Eighty-two] percent of Americans agree adult children who live at home with their parents should pay rent. Too many parents fall into the trap of allowing their adult children to live at home without responsibilities or obligations.”¹⁴⁴ Parents can determine rent, but offering a cheaper rent than children would pay living on their own gives children the idea of what it is like to take on these responsibilities and obligations while parents can cover for everyday expenses like groceries.¹⁴⁵ Parents should consider whether boomerang children moving back home are there temporarily or long-term and the pros and cons of charging rent on a case-by-case scenario.¹⁴⁶

The benefits of charging rent are that children learn responsibility while parents do not spend their retirement fund. Parents also teach their children how to transition into the next phase of life, while respecting and understanding that children may not get married, settle into a job, and start a family as young as their parents may have.¹⁴⁷ Children will learn how to budget and manage their money while not negatively impacting the relationship between parents and children.¹⁴⁸

The cons of charging rent may lead to children taking even longer to reach adulthood.¹⁴⁹ Young adults may feel like they are in limbo because they have financial responsibilities while still being asked by mom, what do you want for dinner?¹⁵⁰ This could actually lead to a digressive, instead of progressive, development of young adults.¹⁵¹ Perhaps a parent may also need to consider that their child will not be at home long-term and charging rent would not benefit their child’s needs.¹⁵² For example, if a young adult is deciding to attend law school and cannot have a job or source of income for the next three years, what would be the benefit of charging rent? If a young law school student has student loans to pay, maybe work around the house would benefit the child more than paying rent. While waiting longer to start

142. See Ludwig, *supra* note 15.

143. See Ludwig, *supra* note 15.

144. See Ludwig, *supra* note 15.

145. See Ludwig, *supra* note 15.

146. See Ludwig, *supra* note 15.

147. See Ludwig, *supra* note 15; see also, Henig, *supra* note 1.

148. See Ludwig, *supra* note 15.

149. See *id.*

150. See Ludwig, *supra* note 15.

151. See Ludwig, *supra* note 15.

152. See Ludwig, *supra* note 15.

adulthood is a product of the new generation, parents should also consider that the poor economy and tough job market does not make starting adulthood easy.¹⁵³

D. Consider the Aging Generation Too

Baby boomers today must not only consider supporting their children as boomerang's take longer to reach adulthood, but also aging parents that may need medical care or may move in with their own children. The idea that clients may have to provide for their children and their parents is more realistic than ever:

Nearly half (47%) of adults in their 40s and 50s have a parent age 65 or older and are either raising a young child or financially supporting a grown child (age 18 or older). And about one-in-seven middle-aged adults (15%) is providing financial support to both an aging parent and a child.¹⁵⁴

The chance that the, “sandwich generation,” or adults in their 40s and 50s are providing for either a child, a parent, or both is increasing and will continue to rise: “[R]oughly half (48%) of adults ages 40 to 59 have provided some financial support to at least one grown child in the past year, (. . .) [b]y contrast, about one-in-five middle-aged adults (21%) have provided financial support to a parent age 65 or older in the past year[.]”¹⁵⁵

If there is a social change occurring in which adult children still depend on parents and parents are still working at age sixty-five, perhaps this is not a case of boomerang's being a “lazy generation,” but rather a greater social change.¹⁵⁶ Perhaps Americans are embracing the concept of youth a bit longer: “The consequent delay in engaging with the developmental tasks appropriate to their life stage had a ripple effect on both generations: it's not just 20 and even 30-somethings who don't want to grow up. If 30 is the new 21, 60 must be the new 40, because their parents aren't any more eager to move on from midlife than they are from adolescence.”¹⁵⁷

VI. CONCLUSION: A NEW KIND OF ESTATE PLANNING FOR A NEW GENERATION

Estate planning is not just about the law anymore, practitioners also need to be concerned with getting to know their clients and their family

153. See Ludwig, *supra* note 15.

154. Kim Parker and Eileen Patten, *The Sandwich Generation: Burdens on Middle-Aged Americans on the Rise*, PEW RESEARCH (May 15, 2013), <http://www.pewsocialtrends.org/2013/01/30/the-sandwich-generation/> [hereinafter *Sandwich Generation*].

155. *Id.*

156. See Adams, *supra* note 16.

157. See Adams, *supra* note 16.

dynamics in a way that will help them plan accordingly.¹⁵⁸ Perhaps the boomerang generation is unlike any previous generation, or maybe it is the redefinition of family life, but whatever the reason, changing families do not call for a template estate plan.¹⁵⁹

There is certainly no “one-size fits all” approach to estate planning, but attorneys can determine some key issues in helping plan the estate: the predictability of a child’s future; should children be treated the same or differently; should a child be the sole or co-trustee of an inheritance; should a trust be distributed in a discretionary manner or a regular predictable system; and what kind of assets can be transferred that protect both parents and children?¹⁶⁰ Christina Arthurs, a practicing attorney specializing in estate planning in New York and Florida, described estate planning as leaving a legacy and getting to know clients on a more personal level:

Estate planning isn’t simply about minimizing taxes anymore. While protecting and preserving assets are still the cornerstone of any estate plan, clients are increasingly concerned with the consequences of passing assets to the next generation and leaving a positive legacy for their heirs. It has become increasingly important to get to know our clients; who their families are and how they will grow up with wealth. The goal of any estate plan is managing family issues and leaving a positive legacy.¹⁶¹

Parents should be prepared to set limits and goals for not only their own future, but for their children’s future as well.¹⁶² If a parent has been somewhat of a helicopter parent, how would a child react to suddenly being cut off? Perhaps charging rent is not only realistic for a twenty-eight-year-old living at home still, but also for the parents who are saving for retirement.¹⁶³ Contingent trusts are important for children that need encouragement, while a supplemental needs trust may be necessary for a child with medical needs.¹⁶⁴ There is no right or wrong answer as to whether parents/clients should inform their children of the intended plan. For some children, it may encourage them to be independent and achieve their own goals, while others may feel like an outcast of the family.¹⁶⁵ Of course, this is for each family to answer, but it is important for the estate planner to discuss these ideas so that parents can make the best decision for their own family.¹⁶⁶

158. See Pennell, *supra* note 34.

159. See Hansen, *supra* note 8; see also Adams, *supra* note 16.

160. See Hansen, *supra* note 8.

161. E-mail from Christina Arthurs to author (Jan. 23, 2014, 10:39 CST) (on file with author).

162. See Manterfield, *supra* note 41.

163. See *Sandwich Generation*, *supra* note 154.

164. See Manterfield, *supra* note 41.

165. See Hansen, *supra* note 8.

166. See Manterfield, *supra* note 41.

If we refer back to the hypothetical at the beginning of the paper, different ideas can be proposed to Bob and Ann in order to provide for their children, Sally and Molly.¹⁶⁷ Perhaps Molly should receive trust distributions on a discretionary basis in order to prevent her alcoholism and encourage her to keep her job.¹⁶⁸ Maybe Sally could be a co-trustee of Molly's trust to ensure that Molly's abusive husband does not take advantage of the money.¹⁶⁹ Bob and Ann could even offer to pay for Molly's rehabilitation as an incentive to be sober.¹⁷⁰ These suggestions are ideas for an estate planner to propose based on his or her own experience. It is also important for a hypothetical client such as Bob and Ann to realize that their situation is unique to their own family, but not unusual to their generation as a whole.

Of course, the future is unpredictable, but the boomerang generation may not be a phase but rather a social change in the raising and providing for families.¹⁷¹ The boomerang generation is taking on different challenges compared to previous generations and has a different outlook on life.¹⁷² Estate planners have to be flexible, empathetic, and perhaps most importantly, non-judgmental. Clients should feel comfortable explaining their unique family dynamic in order for estate planners to do their job best.

167. *See supra* Part I.

168. *See supra* Part I.

169. *See supra* Part I.

170. *See supra* Part I.

171. *See* Henig, *supra* note 1.

172. *See* Henig, *supra* note 1.