

Forces That Shape Estate Planning Over the Next 20 Years—and a Call to Action

by K. Gottlieb, MBA, JD (written February 2022)

There are six interconnected factors or forces that are likely to affect estate planners and their clients over the next two decades and beyond.

1. The potential for unprecedented wealth transfer to the next generation
2. The long-term care crisis looming for older Americans
3. The rapid aging of the population
4. Unsustainably low tax rates
5. Direct Care Worker shortages
6. Low estate planning participation

Let's briefly examine them.

1. The potential for unprecedented wealth transfer to the next generation

The Wall Street Journal gushes, "Transfers to heirs and others are unleashing a torrent of economic activity, including buying homes, starting businesses and giving to charity." According to the WSJ, the research and consulting firm Cerulli Associates estimates that between 2018 and 2042 older Americans will transfer approximately \$70 trillion.¹ But to whom? Heirs, chiefly Generation Xers and Millennials, will receive the lion's

share, approximately \$61 trillion, and the rest will go to philanthropy. But net worth is not a static or steadily increasing figure, especially after retirement. How do health care, long-term care expenditures and taxes figure into this equation? The WSJ does not comment.

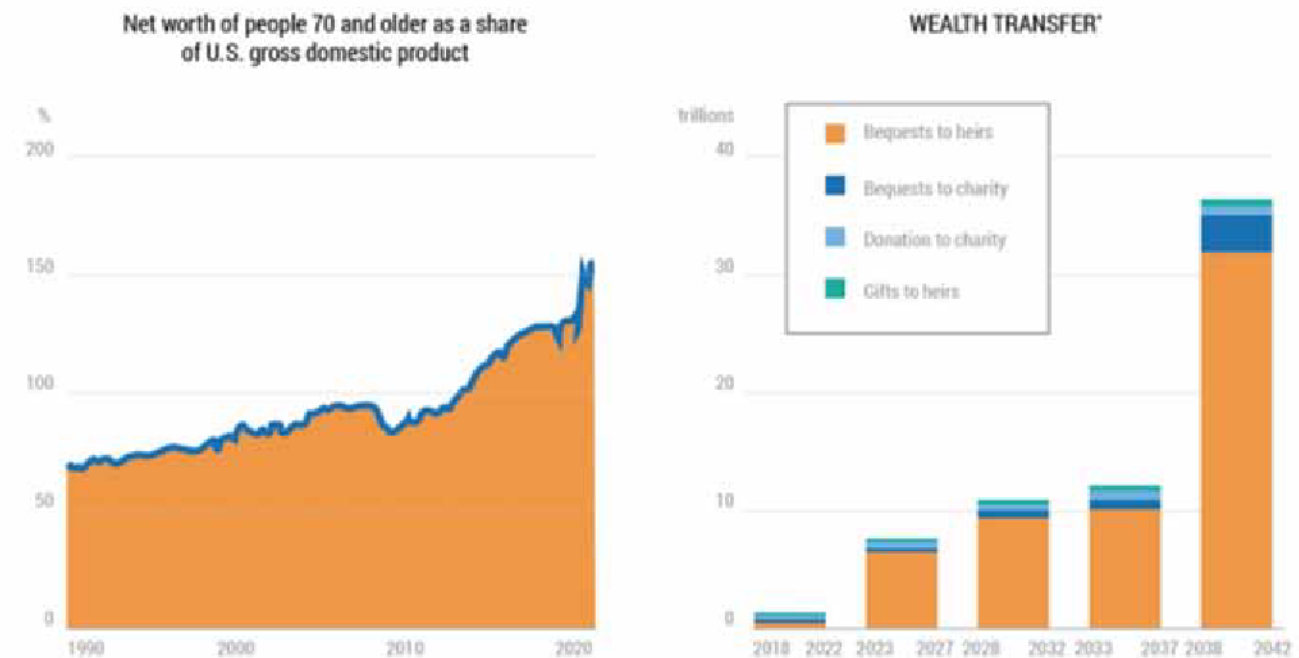
As Figure 1 shows, a marked increase in such transfers will occur in the five-year period from 2022–2027 compared with the preceding five-year period. However, because of other societal trends that we will examine, it is far from clear whether this wealth will reach families, loved ones and charities, or health care institutions, long-term services and support providers, and the taxman.

2. The long-term care crisis looming for older Americans

While a lot of wealth has been and will be accumulated, much of it will be dissipated prior to transfer to intended beneficiaries. Some of this can be avoided through careful planning. It has been well documented that Americans face an underestimated risk of outliving

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Figure 1: Wealth Transfer 2018 – 2042



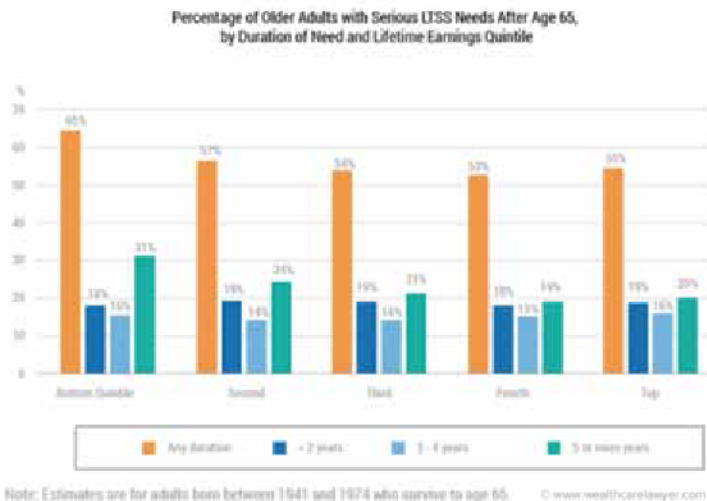
*Figures in 2018 dollars. Totals represent the transfer for the five-year increment indicated (non-cumulative)
Sources: Federal Reserve (net worth); U.S. Bureau of Economic Analysis (GDP); Cerulli Associates (wealth transfer)

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their financial resources in retirement. Shocks are usually caused by unanticipated large health and long-term care expenses.

Figure 2: Long-Term Services & Support (LTSS) Needs



According to a 2021 report of the Department of Health and Human Services,² most adults develop serious Long-Term Services and Support (LTSS) needs after they reach age 65 and use paid LTSS (Fig. 2). LTSS needs are not healthcare services but encompass assistance with activities of daily living, either provided in a care home or at the recipient’s usual residence.

Persons in the bottom quintile of lifetime earnings have somewhat higher LTSS needs than people in the other quintiles, but there are no meaningful differences among the other quintiles. In consequence, persons most likely to be in a position to transfer a significant amount of wealth to the next generation have the same high lifetime risk of needing LTSS as the average American. Unfortunately, few prepare for this because this fact is not well known. Most Americans believe that the chances that they will need LTSS are low.

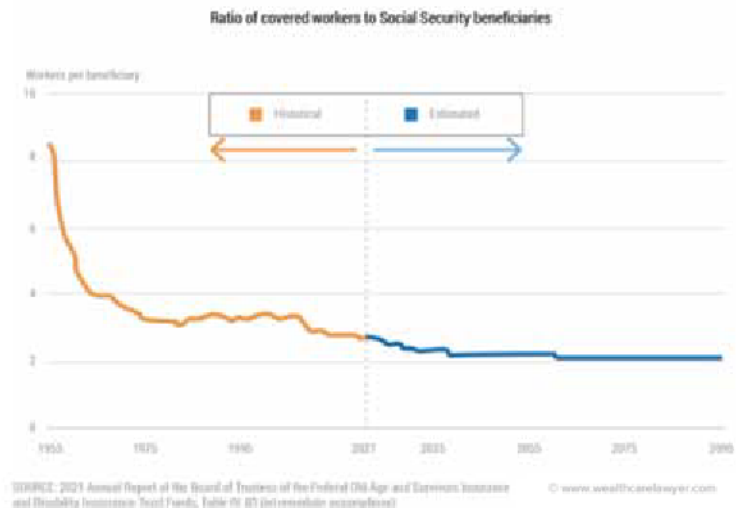
Because LTSS insurance is risky and therefore often unprofitable, many insurers have left the field and few adults are now covered by LTSS insurance. Medicare does not cover the usual LTSS expenses. Unless eligible for Medicaid, large outlays for LTSS, which are common, can jeopardize the financial security of older adults. Families, their advisors and policymakers need to plan better for these exigencies, especially in view of the projected rapid increase in the population ages 80 and older.

3. The rapid aging of the population

The number of workers sharing the cost of supporting Social Security beneficiaries has plummeted and will

continue to decrease further unless future employment patterns change dramatically (Fig.3). The latest Social Security Administration projections indicate that there will be 2.1 workers per Social Security beneficiary in 2040, down from 3.7 in 1970.³

Figure 3: Ratio of Covered Workers to Social Security Beneficiaries



The 2021 Trustees Report projects that the pattern established in 2010 of tax and other noninterest income not covering expenditures will continue for at least 75 years. This is assuming that no program changes are made. At present, full payments of scheduled benefits can be made until 2034.⁴ The corollary is that benefits beyond that date are anyone’s guess.

Possible solutions are to ask the shrinking pool of covered workers to contribute more, decrease benefits, raise other taxes or foster immigration, none of which is really under our control.

4. Unsustainably low tax rates

A sustainable fiscal policy is defined as one where the debt-to-GDP ratio is stable or declining over the long term. The projections based on the assumptions in the Year 2020 Fiscal Year Financial Report indicate that current policy is not sustainable. The assumptions were developed prior to the COVID-19 pandemic and economic downturn. Even so, the debt-to-GDP ratio reached 100 percent at the end of FY 2020 and the authors warn that “...if current policy is left unchanged and based on this report’s assumptions, the debt-to-GDP ratio is projected to rise to over 124 percent in 2030, and to 623 percent in 2095 and to even higher levels, thereafter. Preventing the debt-to-GDP ratio from rising over the next 75 years is estimated to require some combination of

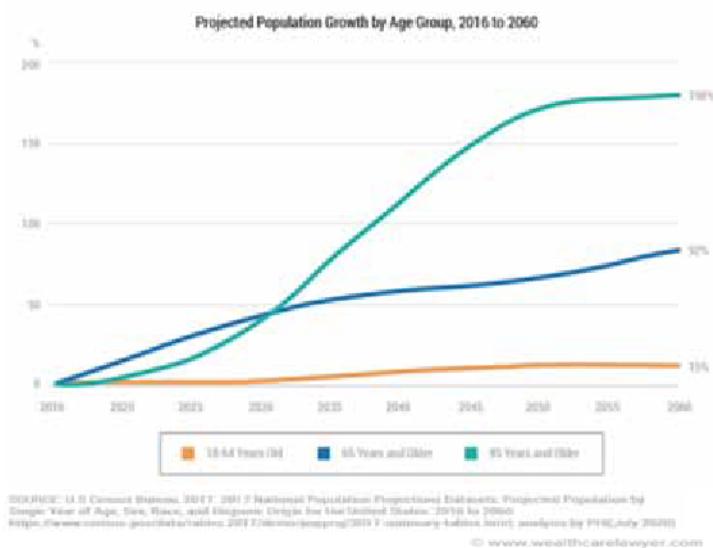
spending reductions and revenue increases that amount to 5.4 percent of GDP over the period.”⁵ Please note that the report says spending reductions AND revenue (tax) increases are needed.

Much of current estate planning has relied on the generous gift and estate tax exemptions, and low capital gains and income taxes. A doubling of the gift and estate tax exemption level was adopted in the 2017 tax revision (P.L. 115-97), effective from 2018 to 2025; for 2021, the exemption is \$11.7 million. This led to an estimate loss of \$83 billion in revenue.⁶ This law is sunseting in 2025 unless renewed. If not renewed, our planning assumptions need a major reset as well.

5. Direct Care Worker Shortages

Direct Care Workers assist adults in the activities of daily living; they do not provide healthcare. They consist of home care workers, residential care aides and nursing assistants in nursing homes. From 2016 to 2060, the population of adults aged 65 and older in the U.S. will nearly double, from 49.2 million to 94.7 million (Figure 4).

Figure 4: Projected Population Growth by Age Group



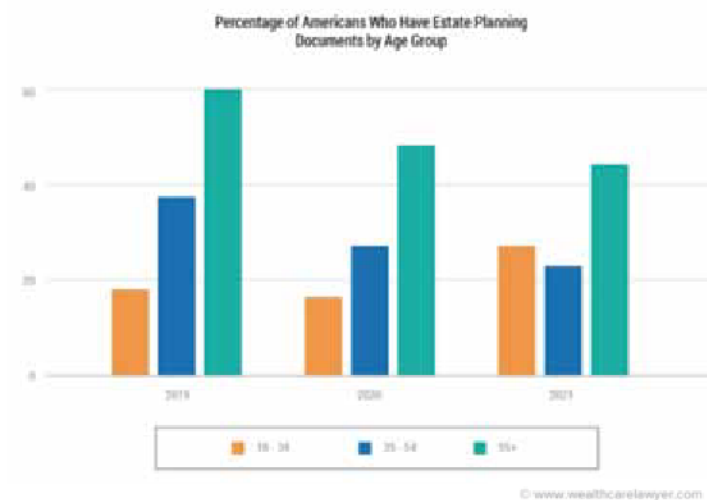
The number of adults aged 85 and older is expected to nearly triple over the same period, from 6.4 million to 19 million. This grey tsunami drives job growth in the direct care workforce. In contrast to the rapid expansion of the older adult population, the population of adults aged 18 to 64 is expected to remain relatively static, which means that there will be fewer potential paid and unpaid caregivers available to support older adults. Currently, there are 31 adults aged 18 to 64 for every adult aged 85 and older, but by 2060, that ratio will drop to 12 to 1.⁷

It has been convincingly argued that Direct Care Workers are underpaid,⁸ but this situation will probably not last too much longer. Demographic forces and the law of supply and demand will lead to more expensive direct care in the coming years.

6. Low estate planning participation

A new report shows that Americans contemplated mortality more frequently in the wake of the COVID pandemic. Indeed, 1 out of 3 people said that COVID caused them to see a greater need for an estate plan. However, procrastination won out for a third of those who, while seeing a greater need, did exactly nothing.⁹ Even more surprising, at least based on this survey, estate planning has *decreased* overall from 2019 to 2021 except for the 18–34 age group (see bar graph).

Figure 5: Americans with Estate Planning Documents by Age Group



Estate planning is poorly understood by many. Since 2017, the percentage of people who say they don’t know how to get a will has increased from 4 percent to 7.6 percent.¹⁰ Even worse, some academics even hold such dim views as, “trust and estate planning as a profession ... has contributed at multiple levels to enduring inequality in America, from building individual family fortunes to the creation of broader class institutions such as trust funds and charitable foundations.”¹¹

A more common prejudice is, “We are not rich enough to need estate planning.” The absence of estate planning, not its proper use, may in fact contribute to inequality. Many who could profit from estate planning never contact a planner. For this reason, leading organizations such as The American College of Trust and

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Estate Counsel (ACTEC) have made it a priority to reach minorities and other associations specifically organize minority estate planners.¹²

However, as we have mentioned above, postponing or foregoing estate planning is pervasive across the population at large. Education must be intensified to reach all population groups to ensure an orderly transfer of the unprecedented amount of wealth that will pass hands in the next 20 years. We do not want resources ending up in the wrong hands, be it family members ill prepared to manage them, or government programs for which we have little appreciation. While taxes are obviously needed, it is also a justifiable belief that funding charities is a more direct way of unbureaucratically contributing to the welfare of communities than taxation.

Conclusion

While Millennials (72 percent) and members of Generation X (59 percent) are significantly more pessimistic about achieving financial security in retirement, as compared with Baby Boomers (43 percent) and the Silent Generation (26 percent),¹³ contemplation of the wealth transfer from the Boomers to the successor generations could alleviate some or most of this anxiety. However, Boomers may not be able to transfer as much wealth as they may want to because as they age, they must pay

for their long-term direct care needs and medical care—costs that will certainly continue to rise, especially as the shortage of long-term care workers increases. Tax rates are currently unsustainably low, and it is quite certain that government expenditures will need to be lowered and taxes raised.

Tax increases will likely take a bite out of the amount of wealth that goes to family members and, unfortunately, instead of being distributed more broadly by the government for social services will be increasingly used to service the federal debt. Much wealth will not be put to its most productive use, e.g., buying homes, starting businesses or giving to charity, as the Wall Street Journal optimistically predicts, but instead be swallowed up by health care, long-term care and taxes to fund the government debt service.

All lawyers, not only those with an interest in Trust and Estates, can help to increase estate-planning participation among Americans. A possible solution is to enlist the help of Millennial and Generation X clients. First, they already take estate planning more seriously, and second, they have much to gain if their parents plan ahead. ■

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Footnotes

¹ Ben Eisen & Ann Tergesen, *Older Americans Stockpiled a Record \$35 Trillion. The Time Has Come to Give It Away*, WALL STREET JOURNAL, July 2, 2021, <https://perma.cc/K7TS-ABU8> (last visited Jan 23, 2022).

² HHS Office of the Assistant Secretary of for Planning and Evaluation, *Most Older Adults are Likely to Need and Use Long-Term Services and Supports* (2021), <https://perma.cc/8GYE-WLVS> (last visited Jan 23, 2022).

³ Office of Research, Evaluation, and Statistics, *Fast Facts & Figures about Social Security, 2021* (2021), <https://perma.cc/X4A3-ZZC2> (last visited Jan 23, 2022).

⁴ *Id.*

⁵ Bureau of the Fiscal Service, *Financial Report of the United States Government - Management - Fiscal Year 2020* (2020), <https://perma.cc/9UYA-8WTG> (last visited Jan 23, 2022).

⁶ Congressional Research Service, *Recent Changes in the Estate and Gift Tax Provisions-Updated October 19, 2021*

(2021), <https://perma.cc/M5WT-8NRJ>.

⁷ Phinational.org, *Direct Care Workers in the United States* (2021), <https://perma.cc/W5NC-65UG> (last visited Jan 23, 2022).

⁸ *Id.*

⁹ Daniel Cobb, *2021 Wills and Estate Planning Study* (2021), <https://perma.cc/YVY2-MP5R> (last visited Jan 23, 2022).

¹⁰ *Id.*

¹¹ Brooke Harrington, *Trust and Estate Planning: The Emergence of a Profession and Its Contribution to Socioeconomic Inequality*, 27 SOCIOLOGICAL FORUM 825–846 (2012), <https://perma.cc/VZW6-86XY> (last visited Jan 23, 2022).

¹² The Association of Black Estate Planning Professionals – Collaboratively Building the Racial Wealth Gap, <https://abepp.org/> (last visited Feb 5, 2022).

¹³ Tyler Bond & Dan Doonan, *Retirement Insecurity 2021* (2021), <https://perma.cc/VX83-722F>.