

KEY WAYS TO PRESERVE FAMILY WEALTH ACROSS THE GENERATIONS

COMPLIMENTARY GUIDE



WHY SAVVY FAMILIES GET WEALTH PRESERVATION ADVICE

According to the old adage, no matter what level of wealth a family has managed to build up, there is still a tendency for them to go “From shirtsleeves to shirtsleeves in three generations”. Despite the best intentions of the first-generation creators of wealth, many families have seen their assets – and living standards – fall quite dramatically as a result of common money management mistakes.

In a highly uncertain world, transferring wealth across the generations efficiently is more of a concern for families now than ever. But there are numerous risks that could ruin your chances of keeping as much money within your family as possible. Some are more prosaic, like the hefty Inheritance Tax bills that might be the result of not maintaining a well-considered, up-to-date will and taking proper estate planning and succession advice; others, like divorce or familial disputes over shared business interests are simultaneously more dramatic and more common than one might think. As the headlines continue to underscore, both are brutal destroyers of wealth – as many families sadly know to their (very great) cost.

BIG RISKS

We tackled Inheritance Tax mitigation strategies specifically as regards to property in another of our eBooks, *IHT Planning and Property: Tips to Minimise Tax Before and After Inheritance*. In this eBook, we have partnered with top law firm Mishcon de Reya to explore essential steps families at all levels of wealth should take to guard against other big risks, including divorce and conflict over the family business.

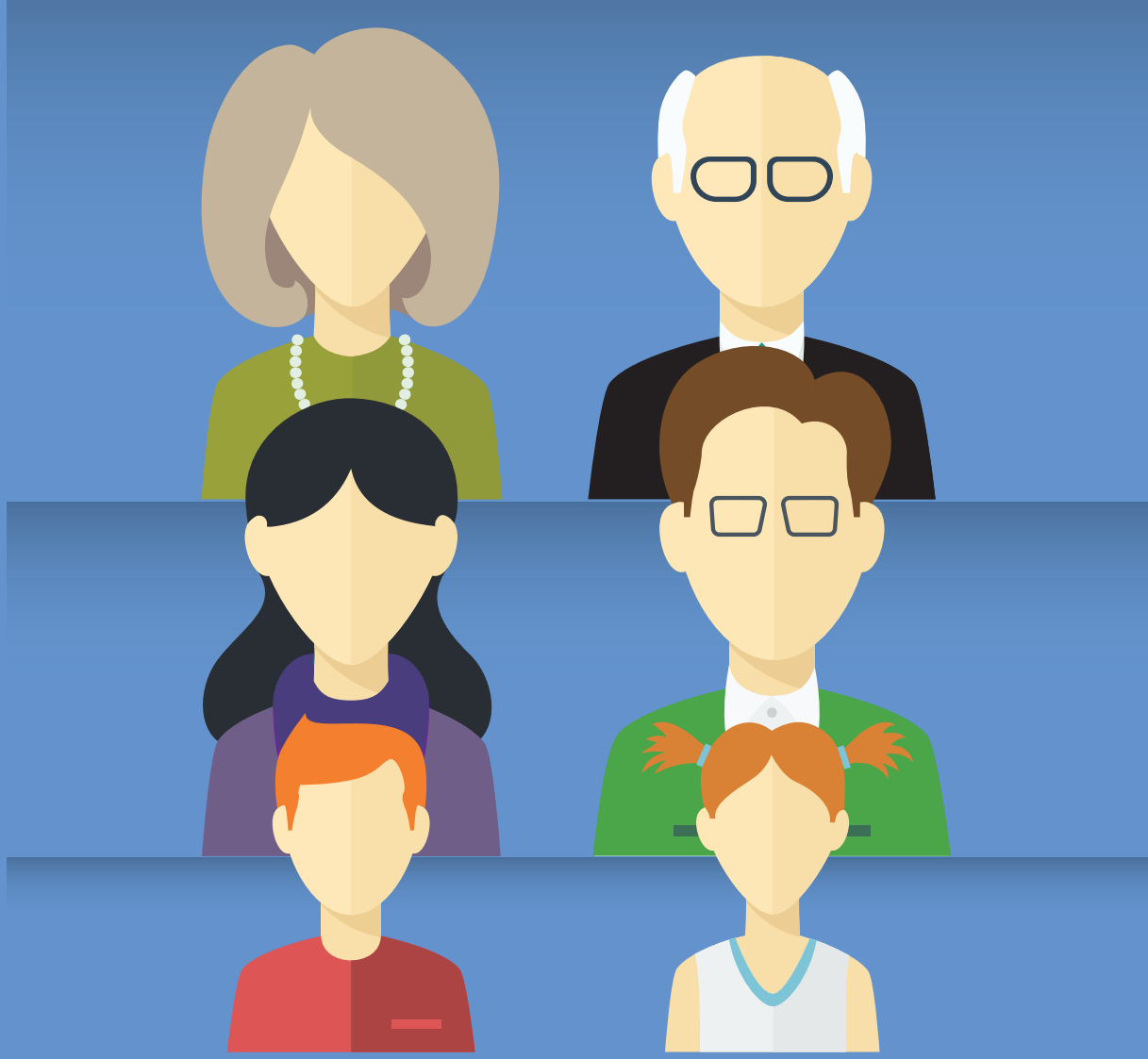
Savvy families have rightly been looking at their wealth “in the round” since time immemorial as a way to use money more efficiently, enabling them to pool capital and minimise their tax obligations through well-established, perfectly legitimate strategies. But the more interlinked and complex a family’s finances become, the more care that needs to be taken in forward-planning and safeguarding their assets over the long term.

When it comes to preserving family wealth and transferring it effectively across the generations, the key is the same as with all other elements of wealth management: take proper advice and get proactive as early as possible. Forewarned is forearmed, and we hope this guide helps further your family’s financial goals – well into the future.

– LEE GOGGIN,
CO-FOUNDER
findaWEALTHMANAGER.com



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Charlie Sosna, Managing Associate in Mishcon de Reya's Private department, and Melissa Lesson, Partner in the firm's Family department, outline vital steps families should take to protect their wealth against potentially devastating risks.

The high net worth community faces a plethora of challenges and risks to their wealth. Risks can be broadly viewed as "external" or "internal". External risks cover third-party creditors, challenges from the State, political instability, economic uncertainty, reputation and the increasing global focus on transparency with the implementation of FATCA (new

tax reporting requirements for US taxpayers) and CRS (a Common Reporting Standard for tax reporting mirroring the transparency required by the US).

Yet however daunting the external risks may be, it is often the internal risks that are less readily addressed and far more detrimental to the preservation of the family's wealth. Family disputes - particularly when it comes to succession and divorce - can divide the family and dissipate its wealth. With that in mind, we set out in this eBook some of the common strategies that families can employ to help preserve their wealth for future generations.

GET THE BASICS RIGHT – WHEN DID YOU LAST LOOK AT YOUR WILL?

Tellingly, 67% of respondents to Knight Frank's *Global Wealth Report* cited succession and inheritance issues as a risk to wealth creation and preservation. This makes it the most cited risk by all respondents, yet 53% of the UK's population does not have a will in place.¹ Many individuals recall drafting a will years before, putting it in a "safe place", and then sitting back and breathing a sigh of relief that it has been dealt with. Having a will is one thing; having a suitable and meaningful will is quite another.

Many individuals have free "testamentary disposition", which means they can leave their assets to whomever they wish on their death. However, "forced heirship" provisions can apply to individuals' estates and this should be factored in. Likewise, religious beliefs may also play a part in the succession of an individual's estate, such as the application of Sharia law to

Islamic testators. Forced heirship rules/religious laws determine that a fixed portion of a person's estate must pass to certain individuals (e.g. spouses and children). The application of forced heirship regimes risks the divergence of the family's wealth. The introduction of the EU Succession Regulation provides many individuals with the opportunity to avoid forced heirship provisions applying to their estate. Wills should be reviewed to ensure that they take into account the application of forced heirship and, where appropriate, the Regulation. These factors should be considered in advance and accounted for as part of the individual's succession planning to avoid unexpected challenges.

Having an appropriate will is the fundamental building block of succession planning and wealth preservation. It is remarkable how many trip at this first hurdle. Individuals should ensure that their will is reviewed at the same time as any significant life event (e.g. marriage, divorce, or the birth of children and grandchildren) and every few years in any event, to be sure that it still achieves what they want and in the most tax-efficient way possible.

¹ www.willaid.org.uk



YOUR WILL IS YOUR FIRST STEP

Many clients believe that their will is the start and end of the estate planning process. This may be the case for those with very simple affairs. For those with more complex affairs, such as the very wealthy, however, the succession planning process should have only just begun.

Whilst a will is essential, it does not address what happens if someone is incapacitated but still alive. For example, a wealthy business-owner with a wife and three children is in a car accident en route to a board meeting. He survives, but is left comatose.

Who will make decisions in relation to the company? Who will have access to his assets to support the family? Who will determine what is in his best interests when it comes to his healthcare? His will may have been updated last week, but it does not help in these circumstances.

Most jurisdictions allow for some form of power of attorney to apply in these circumstances. For example, the UK has Lasting Powers of Attorney in relation to health and welfare, and property and financial affairs. Crucially, the powers of attorney must be entered into before the individual is incapacitated. When preparing and reviewing wills, individuals should do the same in relation to powers of attorney to ensure that they address these risks.

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TIPS FOR OWNERS OF A FAMILY BUSINESS

The preservation of family wealth takes much more than simple estate planning. The vast majority of those in the upper echelons of wealth have made their money through a family business, and therefore protecting the business is central to the preservation of their wealth.

Passing the family business down generations is notoriously difficult. Anecdotally, there is thought to be a 30% chance of a family business successfully passing from generation one to generation two, and only a 10% chance of the family business surviving the transition to generation three.

At generation one, the family business is relatively straightforward. Ownership and management of the company is usually found in one person. He or she, the head of the family, has all the control and power. By the second generation the business may have been diluted between siblings. At this stage

you may already have different interests of different family members, such as some may be owners and managers, whilst others may simply be owners. By the time you reach the third generation, "cousins", there is usually an even greater separation of interests. As interests and roles separate, tensions and risks to the preservation of the family wealth grow ever greater. Successful transitioning of the family business and wealth between generations requires foresight and careful planning.

A distinction should always be made between: ownership of the business, management of the business and personal family affairs. Family members will not always fall into all three areas and non-family members may also be involved in the business. Failing to separate out these three areas when considering succession planning and wealth preservation can often lead to a breakdown in the family and its business.

OWNERSHIP OF THE FAMILY BUSINESS

Shares in a family business are frequently held through trusts to minimise the disruption caused by assets passing through the generations. Trusts enable the shares to be held for the family as a whole rather than being split up on death. Trusts can also offer other advantages to the preservation of wealth, including tax planning and asset protection (both from external claims – e.g. the State or third-party creditors, and internal claims – e.g. divorce).

The trust provides significant control to the trustees, and this can lead to its own conflicts; great care must be taken with the appointment of trustees. It is crucial that they have the requisite skill set to act as trustees, whether they are family members, trusted family advisors or independent professionals.

The introduction of FATCA and CRS mean that such structures are now more transparent. CRS is in its first year of application in many jurisdictions and requires the relevant jurisdictions' authorities to automatically pass certain information regarding structures between themselves. Individuals should keep this in mind and be prepared for the repercussions of CRS. Increased transparency can prompt concerns about the family's reputation in the media and the impact that any adverse publicity may have on the family's wealth. Structures should be reviewed and the impact of FATCA and CRS considered.

The transition of management is not only difficult for the generation taking over, but also the generation letting go. Help is required at both levels to ensure that there is a fluid transition.

MANAGEMENT OF THE BUSINESS

Whilst many individuals will deal with the succession of the ownership of the business via trusts, management of the family business is an *entirely* different matter.

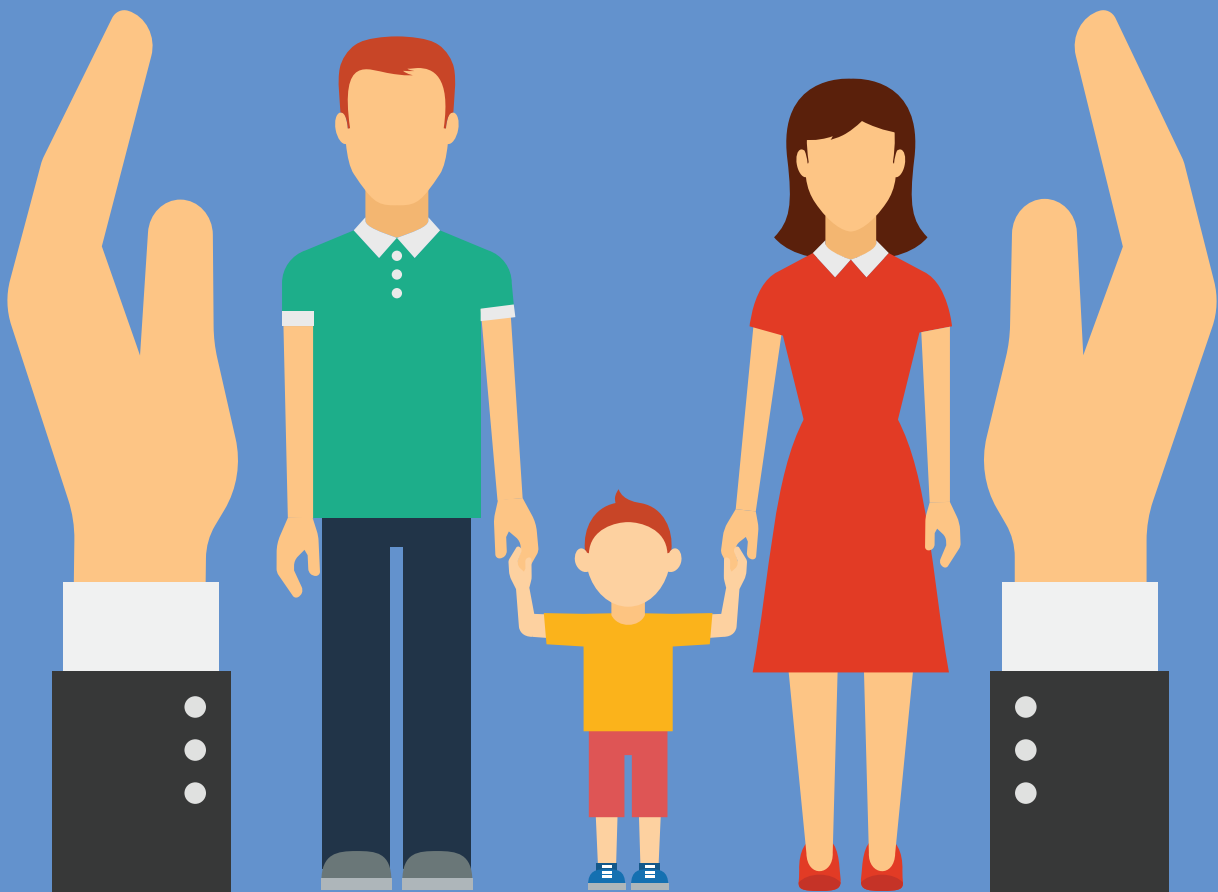
The transition of management is not only difficult for the generation taking over, but also the generation letting go. Help is required at both levels to ensure that there is a fluid transition. The senior generation must feel able to let go because there will be no change until the senior generation relinquishes control.

A family head that outstays his or her welcome is as much a risk to the family's wealth as a junior family member making bad business decisions.

It may be that there are certain family members who are suitable to take on the management of the business where others are not. For example, the Murdochs tested a series of family members as potential successors to Rupert in the management of 21st Century Fox before Rupert's son James was appointed CEO.

It is crucial that there is an active board who are well equipped to make the everyday decisions to manage the company. A good board makes the difference between the success and failure of a business. If there are not appropriate family members to act in the management of the business then the decision to take management away from the family should not be shied away from. It will be in their overall best interests, even if they are unable to appreciate that at the outset.

If some family members are involved in management and others are not then this can frequently lead to tensions that should be addressed upfront. Distinctions must be drawn between distributions received from the company in respect of "ownership" and compensation received from the company in respect of "management". The two revenue streams are not related. This should be made clear at the start to minimise the risk of disputes that could jeopardise the family wealth.



FAMILY GOVERNANCE

A strong family dynamic will often lead to a thriving family business. A family divided will quickly lead to shareholder disputes, trust disputes and soon impact the bottom line of the company and risk the preservation of wealth.

A family constitution should be considered. The constitution would set out the rules by which the family will abide. It can be similar to a shareholders' agreement and is binding on the family members. The family constitution may set out: the roles and powers of the different family members, the processes

by which decisions are made, the reporting of those decisions, and will also ensure that the family meets regularly to discuss family issues outside the board room. This will help separate the business decisions from the family ones and also ensures that all family members feel (and are) engaged with the process.

Having a clear ownership structure, supported by well-established business and family governance, ensures that the necessary checks and balances are in place to support a thriving business. This minimises the risk of disputes within the family and the repercussions that those disputes would have on the business and family wealth.

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PROTECTING WEALTH FROM DIVORCE

England remains one of the most generous jurisdictions for financially weaker spouses, with significant capital and income awards being made, often on a lifetime basis. Such is the generosity of the English courts that some will engineer their circumstances in such a way as to effectively “forum shop”. The Court’s starting point is an equal division of the matrimonial assets unless there is a reason to deviate from this, and those reasons are few and far between.

The best strategy for wealth protection when it comes to divorce is to enter into a Pre-Nuptial Agreement. This can incorporate aspects of local law (assuming one party comes from abroad and there is a possibility that the couple may live elsewhere in the future). In many countries, Pre-Nuptial Agreements are the cultural “norm”, or even, such as in South Africa, a legal requirement to marriage. In England the role of Pre-Nuptial Agreements is less developed.

DOES YOUR PRE-NUPTIAL AGREEMENT PROTECT YOU IN ENGLAND?

For many, especially those married in Europe, their forays into the world of Pre-Nuptial Agreements will have been to tick a box electing their “matrimonial regime” when completing the paperwork to enable them to marry. For others, there may have been lengthy wranglings through lawyers over a period of months. Whichever avenue they took, most people, having gone through the often thorny process of entering into a Pre-Nuptial Agreement, put it in a drawer and do not look at it again until the fateful day their marriage breaks down.

Herein lies the problem. A French couple marry in France, electing the matrimonial regime of “separation des biens” (here property brought into the marriage remains with the party who paid for it or was given or bequeathed it, and only the individual’s possessions are at risk if he or she is in debt). They move to England and some years later their marriage collapses; the husband consults lawyers. When faced with the advice that he will have to part with half of his wealth, the husband’s response is to point out that they are a French family married in France and have elected a matrimonial regime by which they will each simply retain their own assets. He considers himself to be completely protected. He is wrong.

Whilst Pre-Nuptial Agreements are not yet legally binding in this jurisdiction, for a Pre-Nuptial Agreement to be upheld by the Court it must fulfil a number of criteria: both parties must have received independent legal advice; there must have been adequate financial disclosure from both sides; and the document must have been entered into sufficiently in advance of the marriage as to negate any argument of duress. Assuming all of this has been complied with, the Court must then consider whether the contents of the Agreement are “fair”.

As such, when moving to England, it is imperative that in the same way as one would seek advice as to the best schools for one’s children or likely tax exposure, advice should be sought as to any Pre-Nuptial Agreement in existence, whether it is likely to be upheld in England or whether it needs to be redrafted to ensure that the intended protection remains.

WHAT HAPPENS IF YOU CHOOSE TO SIMPLY LIVE TOGETHER RATHER THAN MARRY?

Increasingly, and for a variety of reasons, more people are choosing to simply live together. Many will, to all intents and purposes, live as “husband and wife” and go on to have children together, believing that the lack of marital status alone will provide a significant degree of financial protection were the relationship to break down. Whilst this is not entirely untrue, it is important to seek advice as to the potential pit-falls and how the protection may fall down.

Many cohabiting couples will live together in a property owned by one of them. That person pays the mortgage and at face value it seems that the financial position is clear. However, what happens if the other pays the mortgage “occasionally”? Or pays all the household bills instead? Or pays for the extension? Or organises the refurbishments? These are all ways in which the financially weaker party on the breakdown of the relationship may seek to make a financial claim against the property of the other. The best way to protect against this is to enter into a

Cohabitation Agreement which works similarly to a Pre-Nuptial Agreement and sets out very clearly the mechanisms for any breakdown in the relationship.

It is important to note that when a couple lives together, regardless of whether or not there is a Cohabitation Agreement in place, the birth or adoption of a child to this couple will mean that a financial claim is open to the (typically) mother against the father in the event of relationship breakdown. Whilst the claim is limited to the child (and not the mother, therefore less extensive than in a divorce), it can be significant and will include maintenance, a carer’s allowance and the provision of housing for the child for the duration of that child’s minority.

TAKE ACTION – AS EARLY AS YOU CAN

No two families are the same and each will have their own concerns when it comes to the preservation of their wealth. However, one principle applies to all – a failure to prepare is a preparation to fail and concerned parties should pro-actively seek pre-emptive advice in relation to *every* aspect of their wealth.

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ABOUT MISHCON DE REYA

Based in London with offices in New York, [Mishcon de Reya](#) services an international community of clients and provides advice in situations where the constraints of geography often do not apply. The work the firm undertakes, on behalf of their dynamic and sophisticated client base, is cross-border, multi-jurisdictional and highly complex.

For more information please visit www.mishcon.com

NEXT STEPS:

Inadequate estate planning, divorce and business disputes are notorious destroyers of wealth, with a lack of forward-thinking often souring life plans along with familial relations. Most disaster scenarios are eminently avoidable, however, as long as proper advice is taken well in advance.

The institutions on the findaWEALTHMANAGER.com panel are extremely well-versed in all the challenges and opportunities concerning managing family wealth. They are also very well connected to other professionals, like lawyers and accountants, who can help seamlessly put all the estate planning and succession solutions you require into place.

To find the best investment managers for your profile and needs please complete our [short online questionnaire](#) or if you would like to have an independent, no obligation chat please contact Lee Goggin lee@findaWEALTHMANAGER.com



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