

Nationwide Retirement Institute® Legacy Planning

A client's legacy:

Your role in wealth transfer plans

By Doug Ewing, JD, CFP®, RICP®

Client relationships can gradually become more complex, or they can dive in at the deep end. Because a referral can present a big opportunity out of the blue, it's important to quickly understand the new client's situation and the areas where you can be of help. This case study is the story of a financial professional named Mike and a new client who asked for his help with estate planning. You'll see how Mike leverages his understanding of the legacy planning landscape to reveal and plan for his client's specific needs.

Estate planning vs. legacy planning



Mike is a financial planner with an independent broker/dealer. He made a career change about 10 years ago from his prior job in software sales. He's been able to build a successful practice largely through the contacts he made in his old job, now helping those clients transition between opportunities in what can be a volatile industry. Referrals have been a big part of Mike's success.

Today, Mike has an appointment with a referral from a mutual friend and client, Danny. The referral, Rich, is a regional sales manager for a consulting firm that specializes in accounting software. After exchanging pleasantries and reviewing some mutual acquaintances, the discussion turned to business. "So, Rich, tell me a little about your situation."

"Well," Rich began, "I've had a lot of big changes in my life over the last several years, so I figured it was time to sit down with someone and figure it all out. For starters, I changed jobs a couple of years ago. I have money sitting in my old 401(k) and I really need to roll that over. I have an old IRA, but to be honest, I haven't paid too much attention to it recently. So I need some help with that. But the big reason I wanted to talk to you is that Danny said you did some estate planning for him, and I really need to deal with that."

"Well, when you say estate planning," Mike clarified, "my role is a bit broader. I can help you identify your needs and design a path for your assets but then we'll need to go to an attorney to draw up the papers that carry out your goals. That's what I did with Danny, and I have a great attorney if you need a referral."

Key topics:

Estate planning vs. legacy planning

When to include the spouse

Frank talk about beneficiaries

Considerations for second marriages

Beneficiary designations

The role of trusts

Anticipating a beneficiary's income tax

Life insurance and Roth conversions

Involving an attorney

The complete picture



Marriage and conflicts of interest

In general, it is permissible for a financial planner or an attorney to work with both spouses in preparing a financial or estate plan. Be aware, however, that conflicts can arise that would make it inappropriate for them to continue to work with both spouses. For example, if a planner or attorney learned that one spouse was concealing financial information from the other spouse, that could create a conflict that would require the professional to terminate engagement with one or both spouses. It is also generally impermissible for a planner or attorney to represent both spouses in a divorce scenario.

"Gotcha," Rich replied. "Well, whatever you did, Danny said it really helped. Anyway, let me explain what's going on. I got divorced about seven years ago. I never thought I'd get remarried, but it happened. I met Janet a few years ago and we got to the point where we just knew that we were going to be together for the duration, so we decided to get married. But this is where it gets complicated. I'm 61. I've got two kids in their 20s. My oldest is married and they just had a little girl. Still can't believe I'm a grandfather," Rich seemed to wince a little as he said that. "Janet is also divorced. She's 55. Her son is in college. We're not the Brady Bunch, but it's a little more complicated that I'm used to," Rich laughed.

When to include the spouse

"You said you need to deal with estate planning," Mike noted. "What does that mean to you? What would a good outcome look like?"

"Huh," Rich pondered the question.
"Well, as I mentioned, things have been a little crazy for the last 10 or so years. Wasn't always great, especially going through a divorce. I just feel like in the last couple of years, I've found my stride. My new job is great. I'm making good money. Janet makes pretty good money, too. We're really happy. I want to capitalize on this. I feel like if I do it right, I can set us up for a really nice life. Janet's a little younger than me, so I want to make sure she's going to be OK when I'm gone. And obviously, I'd love to be able to help my girls, too.

When my dad died, he didn't have a lot. It was tough on my mom. I feel like I have a chance to do something good here. I don't want to mess it up."

"That's awesome," Mike said. "Where's Janet now?" "She's working," Rich replied. "She's a manager of a retail store over at the mall. She has to work evenings occasionally."

Mike nodded. "No problem. I just think that with all the moving parts here, it would make sense to talk this through together. "You're right," Rich agreed. "I'll talk to her and figure out a time when we can both come in. While I'm here, though, can we talk about whether I should roll this old 401(k) into my IRA?" Rich slid a statement across the table. Mike smiled, "Absolutely."



Frank talk about beneficiaries

A couple of weeks later, Rich and Janet came into Mike's office for their follow-up appointment. In anticipation of the meeting, Mike had sent them a detailed questionnaire about their current situation. Here's some of what it revealed:

	Rich		Janet
Age	61		55
Income	\$290,000/year		\$85,000/year
401(k)	\$37,000		\$25,000
IRA	\$650,000		\$120,000
Roth IRA	\$200,000		\$20,000
Stocks	\$50,000		\$150,000
Life insurance	\$500,000	20-year term Cassie/Denise 50/50	N/A
Children	Cassie, 29	Married to Sean 1 child, Ava	Tyler, 20
	Denise, 26		

"Okay," Mike began, looking at the questionnaire. "This is really important information. I appreciate you filling it out." Then he put the questionnaire down. "But tonight, what I really want to do is get to know you both better. My goal is to help you accomplish the things that are important to you. Janet, when Rich came by before, he made it pretty clear that his top priority was doing some long-term planning for you and your families. So that's what I'd like to focus on. Rich, we'll start with you. Tell me about Cassie."

Rich looked puzzled. "What do you need to know?" He said.

"Well, when you first came by, we talked about your goals. You mentioned that one of the things you'd like to do is take care of your girls. So is there anything that would be an issue there? Some kids just aren't mature enough to handle an inheritance. Some kids have more serious issues. Some people have issues with in-laws. It could be anything, really. Would you have any concerns about leaving her money?" Mike asked.

Rich exhaled and looked at Janet, "When Donna and I got divorced, it

was pretty tough on the girls. Cassie was pretty upset about it. It was a rough time. Anyway, things were getting a little better for a while, but then she met Sean." Rich hesitated for a moment.

"We're not big fans," Janet explained. "To be honest, Cassie's a really sweet kid, but she's not super confident sometimes. Sean is very controlling. Too controlling. Rich says she was too young to get married. She hadn't even finished her degree yet. Ava's a little doll, but we both felt like Cassie wasn't ready to start a family. And Sean's just bounced around between different jobs. Rich has had to help them with the rent a couple of times. The whole thing has made things worse between Rich and Cassie. It's been kind of a nightmare."

"I'm really sorry to hear that," Mike began. "But you're right, Janet. It's important to know stuff like this."

"Look," Rich sighed. "I know this sounds terrible, but if anything happened to me, I don't want that guy getting anything. I want to take care of Cassie, but not him. He's caused me a lot of aggravation, and frankly, I don't trust him."

"Understood. We can definitely factor that into your plans. What about Denise?" Mike asked.

"Well, Denise is my rock star," Rich gushed. "She just graduated from law school at the top of her class, and she's starting next month at one of the big law firms downtown. When she told me how much they'll be paying her, I almost fell out of my chair!"

"What type of law will she be doing?" Mike asked.

"Mergers and acquisitions." Rich laughed. "I asked her if there was someone at her firm who could do our wills. There is, but let's just say we're not prepared to pay \$750 an hour!"

Mike smiled as he turned to Janet, "Tell me about Tyler."

"Tyler's your basic 20-year-old, I guess," she laughed. "He's up at college, and he seems like he's having fun. A lot of fun," she rolled her eyes. "But he's still on track to graduate on time. For now, anyway."

Considerations for second marriages

"I've worked with quite a few blended families," Mike said, "and one issue we really need to consider is how you want to plan for the kids. Some people say we'll treat them all the same. Some people prefer to take care of only their own kids. Have you guys thought about that?"

"Actually, we have," Janet said.
"When it comes to the kids, we'd each like to take care of our own.
It just seems easier. Plus, I don't pretend to be the girls' mom.
They have a mom. As far as they're concerned, I'm Janet. And we're all good with that."

"Yeah, it's kind of the same with Tyler and me," Rich said, "although it is pretty fun to have a guy in the family. He's a great kid. The other thing is that Janet's ex, Dave, is kind of a flake, so I'm fine if Janet wants to leave her stuff to Tyler. I think that makes sense."

"What about each other?" Mike asked. Rich and Janet looked at each other. Janet started to laugh. "You wanted to get married, so what are you going to do for me?"

"This is going to sound awful," Rich was laughing now too, "but we haven't talked too much about that yet. I mean, I did make her the beneficiary of my retirement accounts." "Tyler is still the beneficiary of all my accounts," Janet deadpanned.

Beneficiary designations

Mike chuckled and looked at his notes. "Okay, let me share a few thoughts and maybe we can start working through a few issues. It seems to me that the first thing we may want to address is how you will take care of each other if something were to happen. Janet, Rich told me that making sure you're comfortable if anything happens to him is his first priority. And you each want to

take care of your own kids. One way some couples will do this, especially in second marriage scenarios, is by setting up trusts. I'll spare you the gory details, but trusts can be set up to allow a surviving spouse to have enough income and assets to maintain their lifestyle, but when the second spouse dies, the assets will go to the kids from the prior marriage."

"Sounds expensive," Rich said. "Is there any way to do this stuff without getting an attorney involved?"



"I don't think that would be smart," Mike cautioned. "You two are in a second marriage. You both have kids. You have substantial assets. You should really sit down with a lawyer. What we're doing now is meant to help you sort through some of your issues so that you can have a game plan and know what to expect. And we can try to keep it as simple as possible."

"Let's talk about you two first. We just need to think everything through. For example, Rich, did you make Janet the sole primary beneficiary on all of your retirement accounts?"

"I did," Rich said proudly.

"That's understandable," Mike noted. "But there are some practical issues that you might want to consider. For example, if Janet inherits your accounts, she'd then be completely free to name her own beneficiary — perhaps Tyler."

"Or her next husband!" Rich realized out loud. Janet gently smacked him with her notepad. "Well, that is a concern for some people," Mike chuckled. "But Janet would be under no obligation to name your daughters as beneficiaries."

"One way to address that would be to split your IRA beneficiary designations between Janet and the girls - say, 60% to Janet and 40% to be split between the girls. For many people, that's a perfectly good solution. But there is also the issue with Sean. Generally, once you leave a retirement account to someone, they are free to name their own successor beneficiary, so Cassie could name Sean. So even though it's extremely unlikely, he could end up inheriting some of those assets."

"Then there's Ava. Normally, when people have grandchildren and are naming their kids as beneficiaries, I recommend a 'per stirpes' designation. This means that if Cassie were to pass away before you, her share of inheritance would go to her heir, Ava. But Ava is a minor, so someone would have to be appointed as a guardian to manage her inheritance. Chances are, that would be Sean. Would you be OK with that?"

"Nope," Rich declared.

Mike thought for a minute. "OK, there are two ways we can deal with that. The first is to have a trust in place and name it as a beneficiary of your retirement assets. That's probably the safest route. The second is just to make sure if Cassie were to pass away, which is obviously unlikely, you could immediately update your beneficiary designation to name Ava. But you would want to set up an UTMA arrangement."

"What's that?" Rich asked.

"It stands for Uniform Transfers to Minors Act. It gives you the ability to name a custodian to manage assets on Ava's behalf. Maybe Denise, for example. The downside of an UTMA arrangement is that as soon as Ava hits the age of majority, which is 18 in our state, she'd have full access to the money and could do whatever she wanted with it."

Rich mulled it over for a second. "That's okay. She's a good kid."

"She's 15 months old, Rich!" Janet chided.

The role of trusts

Then Janet thought of a new question. "When Tyler's father and I got divorced, I got a chunk of company stock he owned as a part of the settlement. It's worth about \$150,000 right now. If something happened to me, there's no way I'd want Tyler to get all that money right away, and he's 20," she said, staring at Rich. "Would a trust help with that?

"I was going to ask you about that stock," Mike said. "The short answer is yes, it could help a lot. Specifically, you might want to consider a revocable living trust. They can be really good for accounts that don't have beneficiary designations.

You could title the brokerage account that holds the stock in the name of the trust. If you passed away, the trust would become irrevocable, a trustee you name would manage it, and the proceeds would be distributed to Tyler however you decide. Of course, holding a single stock can be pretty volatile. You might want to consider diversifying."

"Yeah, it's been a wild ride at times," Janet confessed. "What if I change my mind or need that money for myself?"



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"Revocable trusts are just that — revocable," Mike explained.
"You can pull the money out and terminate the trust whenever you want. In the interim, it will be there to keep Tyler from buying a Harley and heading to Vegas."

"Wait, have you met Tyler?" Janet asked. "I just found out that he has that online sports gambling app on his phone!"

"Oh, he's fine," Rich scoffed. "All of the guys in his frat have that. He's only got twenty bucks on it."

"It doesn't sound like a big issue," Mike noted, "but this is why I ask so many questions. There are always potential issues with beneficiaries. I've had clients whose kids have had some really serious struggles. The problem is that if I didn't ask, they probably wouldn't have told me. And that's when things can get bad. We can plan for almost anything, as long as we're open about our issues. Your kids and your grandkids are important to me. The way I look at it, I work for them, too."

Anticipating a beneficiary's income tax

"Another issue to consider is Denise." Mike continued. "She could end up being a high earner for a long time. So you'll want to have a plan in place for taxes."

"Estate taxes?" Rich asked.

"Actually, no," Mike responded. "At this point, you're not very likely to have an estate tax issue, although that could change in the future. That's something you should confirm with an attorney. It's actually income taxes that I'm more concerned with."

"You currently have almost \$800,000 in tax-deferred retirement accounts. You're both still working, so that should continue to grow. The issue is that this money will be fully taxable when it's paid out to beneficiaries. So as we consider Denise's earning potential, she could find herself in a very high tax bracket throughout her career. If she were the beneficiary of a tax-deferred account, she'd have to pay income taxes on that money at her top marginal rate. That could easily be 35% or more, based on current rates."

"And if you made a trust the beneficiary of your taxdeferred accounts," Mike continued, "the taxes could really spin out of control. Trust income is taxed quite rigorously. But I noticed on your questionnaire that you both have done a great job of leveraging Roth IRAs. If it turns out that you want to do trust planning, leaving your Roth IRA assets to the trust would help avoid that tax issue. Roth distributions are generally tax free, even when paid out to a trust." "So should I max out my Roth 401(k)?" Rich asked. "That's how I have that Roth money now."

"Well, I can't give you tax advice," Mike replied, "but between your job and Janet's income, you're already in a 32% federal income tax bracket. The tax break you'll get from maxing out your traditional 401(k) will be pretty substantial, over \$8,000 annually. You might be better off taking that money and investing it."

%

Trusts and taxes

When a trust becomes irrevocable, it will generally become a separate legal entity from the person who set it up. This means that the trust will have to file its own income tax return each year. To discourage people from using trusts to accumulate large amounts of money, the Internal Revenue Code imposes significantly higher tax rates on trusts than those that apply to individuals.

A trust can avoid paying taxes on trust income by passing that income through to a trust beneficiary. The trust beneficiary will then pay taxes on the income at their own personal tax rate, which should be lower. The problem is that often the goal of trust planning is to delay or control distributions to beneficiaries. This can cause a tax problem, especially when a trust is named as the beneficiary of retirement assets.

In the past, attorneys have been able to mitigate the tax issues presented when leaving retirement assets to a trust by drafting a "look-through" trust. Under the "look-through" strategy, a trust could look to the oldest trust beneficiary and use that beneficiary's life expectancy to "stretch" distributions from the retirement account to the trust. This minimized

annual distributions from the retirement account to the trust. In some cases, the trust would be able to fully pass those smaller distributions along to beneficiaries, completely avoiding trust tax rates. The "look-through" strategy allowed the retirement account owner to maintain control over the distribution of those assets while reducing the likelihood that the trust would end up paying the taxes on those distributions.

However, the SECURE Act eliminated the stretch distribution option for many nonspouse beneficiaries, replacing it with a 10-year distribution rule. If this 10-year rule ends up being applied to trusts, it could dramatically complicate the use of trusts to control the distribution of retirement assets. If the trust receives a larger distribution from the retirement account than it can distribute to beneficiaries, the trust will end up paying taxes on the undistributed assets. One strategy that may avoid this scenario is leaving Roth assets to the trust. Even if the 10-year distribution rule applies, those distributions to the trust will generally be tax free. This might make it easier for trusts to delay or control distributions to beneficiaries without serious tax ramifications.



"There's always so much to talk about. Try to tackle one issue at a time."



Tax efficiency

To preserve as much of the estate as possible, the goal is to minimize taxes. In order to do so, consider who should pay the taxes — and when. In early retirement, the client's effective tax rate may be lower than the beneficiary's will be in the future.

The widow's penalty

One potential issue to be aware of when planning for married couples is sometimes referred to as "the widow's penalty." This can happen when one spouse inherits retirement assets from the other spouse. In some cases. the required minimum distributions on those assets might not change much, particularly when spouses are close to the same age. What will change, however, is the survivor's tax filing status. As a single filer, a widow will be faced with narrower tax brackets and possibly a higher effective tax rate going forward.

Life insurance and Roth conversions

"Another idea," Mike continued,
"would be to buy some permanent
life insurance."

"What's *permanent* life insurance?" Rich asked.

"Currently, you have term insurance — a 20-year term. At the end of the term, it typically becomes prohibitively expensive to renew the insurance, so most people just let it lapse. Then you no longer have any life insurance. There are different types of permanent insurance, but the idea is that it remains in effect until you die. At that point, it pays a tax-free death benefit. It can be very helpful for trust planning."

"Anyway, let me share another thought. When are you planning on retiring?"

"I will not work a single day beyond my 65th birthday," Rich announced.

"Janet, what about you?" Mike asked.

"Well, I'll only be 59 at that point, so I probably won't retire, but I would love to work only part-time."

"OK, so at that point, your income will probably come down quite a bit. Rich, we can talk more about this later, but I'm going to suggest you consider holding off on claiming Social Security benefits until you turn 70. You'll get a bigger monthly check and lock in a higher survivor benefit for Janet. During that time, from 65 to 70, you'll probably be paying a much lower effective tax rate. That would be the time to start moving some money into Roth accounts with annual conversions. Also, after you stop working, you could use distributions from your retirement accounts to pay premiums on life insurance."

"The bottom line is that many married couples will have an opportunity early in retirement to build some tax efficiency into their plans. When you are filing as a married couple, you get the benefit of much larger tax brackets, and this can allow you to draw down your retirement accounts

at a fairly low effective tax rate. Now, when I say "draw down," I don't mean spend. By doing small annual Roth conversions and investing in permanent life insurance, you're trading paying some taxes upfront for a pool of tax-free assets later. You'll also be potentially lowering required minimum distributions in the future, which can mean a lower tax bill for Janet later in retirement."

"Also," Mike continued, "being proactive about income taxes can be a smart wealth transfer strategy. The basic idea is to take advantage of your potentially lower rates early in retirement in order to avoid much higher rates in the future. Seeing as two of your potential beneficiaries — a trust and Denise — are likely to be looking at high tax rates, it could really be beneficial to try to live on your tax-deferred accounts and leave incometax-free assets to your beneficiaries."

Involving an attorney

"Wow," Janet said. "This is a lot to keep track of. I stopped taking notes about 20 minutes ago."

"I'm sorry," Mike said. "I get carried away, especially in first meetings.

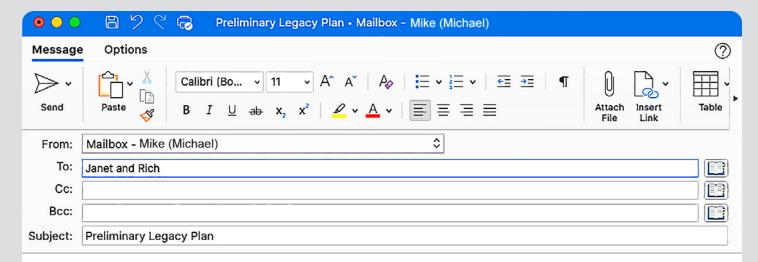
There's always so much to talk about.

But going forward, what we'll do is try to tackle one issue each time we meet.

I don't want to overwhelm you."

"OK, so Job One is to sit down with a lawyer. I have a friend, Diane Jones, who I refer people to regularly. She's very good and pretty reasonable on cost. I know that's a concern for a lot of people. Not only do you need to get new wills done, but she'll want to talk to you about powers of attorney and advance health care directives. Those will be important in case either of you is ever incapacitated. She'll also be able to make a recommendation on trust planning."

"In the interim, let me put some thoughts together. I'll send you an email that you can share with Diane or whoever you retain. That will help you have a productive meeting." The next day, he sent a detailed email.



Dear Janet and Rich,

Thanks again for coming into the office. I really enjoyed our discussion. I wanted to share some preliminary thoughts on how you might meet your legacy planning goals. I'm working on the assumption that you may choose to put trusts in place for the benefit of your kids. I'm hoping that marital trusts may not be necessary, but we'll defer to your attorney on that. Obviously, we can revisit this after you meet with an attorney and as needed as you progress through retirement.

- Rich creates trust for benefit of Cassie/Denise (names Denise as successor trustee); trust provides that if Cassie
 predeceases Rich, Denise will manage Cassie's share for the benefit of Ava; trust can control distribution to Ava as long as
 desired. Per your instructions, the trust will be drafted so that Cassie's husband Sean will not inherit or gain control over
 Cassie or Ava's share of assets.
- Rich names Janet and his trust as split beneficiaries of his IRA (\$650,000). This arrangement will allow Rich to provide
 for the girls from his IRA while leaving the rest to Janet. The percentages of the split can be determined by you to meet
 your objectives. At Rich's death, Janet will be able to retitle her share in her own name and name her own beneficiaries
 without restriction.
- 3. Rich makes Janet beneficiary of his 401(k) (\$37,000). At Rich's death, Janet can roll into an IRA and name her own beneficiaries without restriction.
- 4. Rich makes his trust the beneficiary of his Roth IRA (\$200,000).
- Rich to consider permanent life insurance to be left to his trust (\$250,000); should Rich decide against purchasing insurance (or prove to be uninsurable), Rich can revisit IRA and 401(k) beneficiary split.
- 6. Rich will consider converting IRA assets to Roth IRA beginning at retirement (age 65).
- 7. Janet creates revocable trust for the benefit of Tyler (names Rich as successor trustee).
- Janet places brokerage account in her trust (\$150,000).
- 9. Janet names her trust as beneficiary of her IRA (\$120,000).
- Janet names her trust as beneficiary of her Roth IRA (\$20,000).
- 11. Janet names trust as beneficiary of 401(k) (\$25,000).
- 12. Janet can revisit naming trust as beneficiary of retirement assets as Tyler gets older.

As you can see, some tax-deferred retirement assets will be left to trusts under this plan. Hopefully trusts can be drafted to maximize the distribution period and allow trustee to pay taxable amounts to beneficiaries annually.

I look forward to talking with you again after you meet with an attorney.

Regards,

Mike

End of case study.

The complete picture

Ultimately, Janet and Rich will work with an attorney to formalize their estate plan. In the interim, however, Mike has helped them more clearly identify their goals and laid the foundation for an effective legacy plan. Let's consider Mike's actions in a little more detail.

First. Mike understood the importance of going beyond the names and ages of Rich and Janet's beneficiaries. He asked questions about their relationships with their kids and uncovered some issues that might not have come to light otherwise. For example, he learned that Rich and Janet had strong feelings about Cassie's husband, Sean. They also learned that Denise was on the fast track to a high tax bracket and that Tyler was probably not a good candidate to come into a pile of money anytime soon. These are important considerations in Janet and Rich's plans. By doing a little digging and uncovering this information, Mike helped them refine their plans.

Mike also made sure that Janet and Rich realized that while there were different ways to go about their objectives, some had significant limitations. Using an UTMA account for Ava would obviously be easier and cheaper than setting up a trust, but any control over the assets would

end when Ava attained the age of majority. Likewise, while simply splitting Rich's IRA between Janet and the girls would work in many cases, it left the door open to Sean possibly inheriting those assets.

Another aspect of Mike's guidance that will help Janet, Rich and the kids is his attention to the



A big issue: income taxes owed by beneficiaries on inherited assets.

sometimes-overlooked issue of income taxes. Many people equate estate planning with estate taxes. Mike made sure that Janet and Rich realized that income taxes were a potentially much bigger issue for their beneficiaries. He clearly explained the benefits of leveraging lower tax rates early in retirement to build tax-free assets, such as Roth accounts and permanent life insurance, that will lower the tax burden on their beneficiaries.

Mike also recognized the role that Social Security can play in a tax-efficient wealth transfer plan. Delaying Social Security benefits can open a window to do Roth conversions at a lower effective tax rate. It will also offer the additional benefit of a higher survivor benefit for Janet.

Finally, the steps that Mike proposed in his email are flexible and can be quickly modified as circumstances change. Obviously, Rich and Janet aren't done working. They'll accumulate additional assets as they continue to prepare for retirement. As they do, they can easily change beneficiary designations to meet their concurrent goals of maintaining a desired standard of living for the surviving spouse while also taking care of their kids. As Tyler grows older and more mature, Janet can simply name him as a direct beneficiary of her retirement assets.

Perhaps most importantly, Mike has helped to build a plan for Janet and Rich's entire family. He has positioned himself as a sort of family wealth manager, looking out not just for Janet and Rich, but for Cassie, Denise and Tyler as well. By doing so, he's increasing the likelihood that these adult children will continue to look to him for advice even after they inherit assets from their parents.





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