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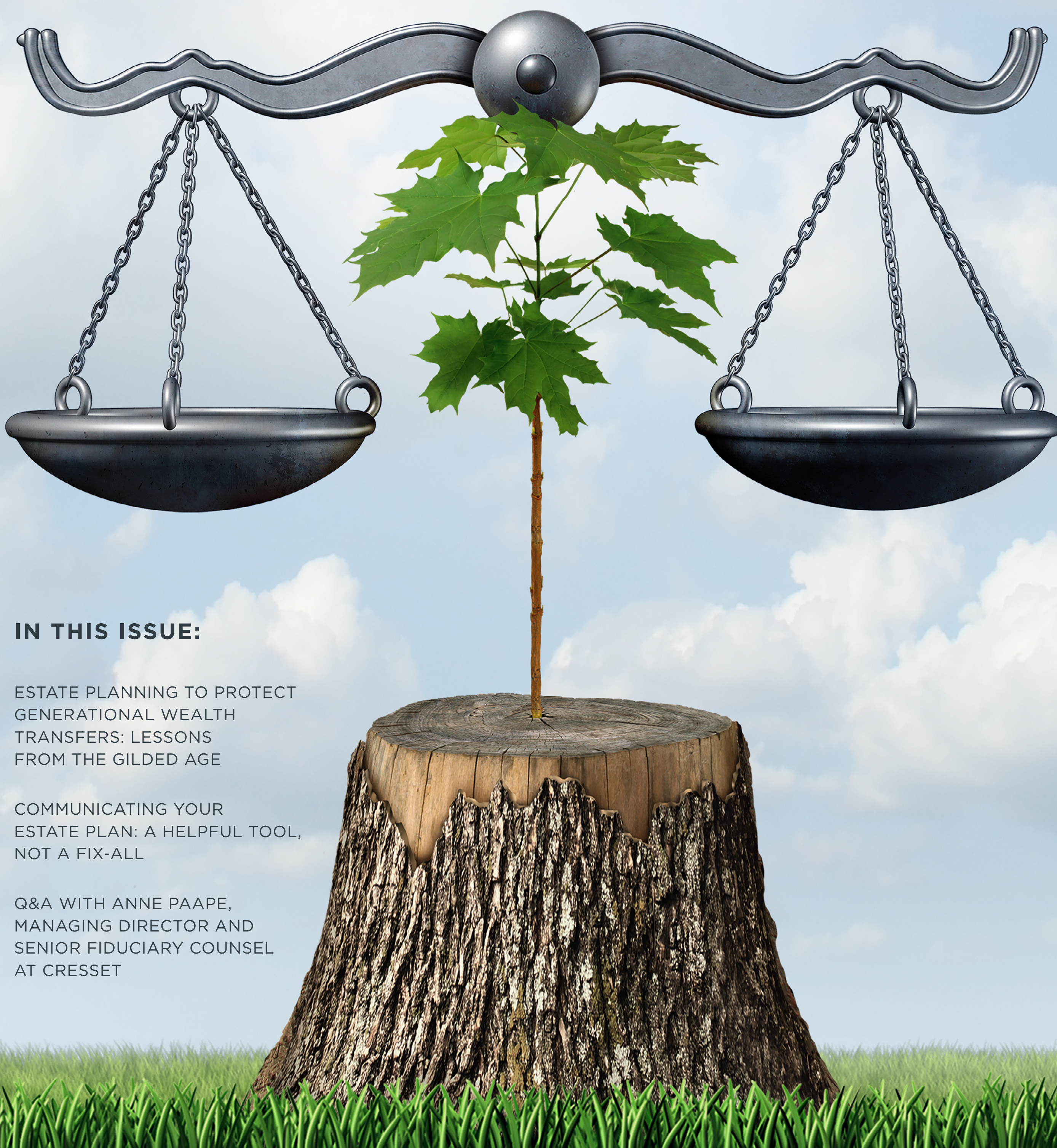
THE SPOTLIGHT

BROUGHT TO YOU BY ROBINS KAPLAN LLP'S WEALTH PLANNING, ADMINISTRATION, AND FIDUCIARY DISPUTES GROUP

PRESERVING LEGACIES:

THE LEGAL FRAMEWORK OF GENERATIONAL WEALTH TRANSFER



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WELCOME TO THE SPOTLIGHT

BROUGHT TO YOU BY ROBINS KAPLAN LLP'S WEALTH PLANNING, ADMINISTRATION, AND FIDUCIARY DISPUTES GROUP

The Spotlight strives to provide a forum to discuss the latest news and compelling issues impacting fiduciaries and those to whom fiduciaries owe duties. Whether you are an officer, director, trustee, beneficiary, trust officer, attorney, financial advisor, or anyone impacted by the law governing fiduciaries, we hope that you will find this newsletter interesting, informative, and perhaps at times even a bit entertaining.

Fiduciary disputes come in many varieties, but they share some consistent themes that involve the erosion of trust, high emotion, and opportunities—sometimes missed—for creative approaches to avoid or resolve litigation. As practitioners and teachers of fiduciary law, our attorneys have built a reputation for excellence in meeting the needs of individuals and organizations facing complex fiduciary issues, starting with the transactional and estate planning work that can mitigate risk from the beginning. We counsel individuals and business owners in a broad range of fiduciary issues, from estate planning and business succession, to dispute resolution and litigation when unavoidable.

Is there a topic affecting your practice that you would like us to discuss in an upcoming issue of The Spotlight? Let us know at all_marketing@robinskaplan.com.

– Denise S. Rahne and Steven K. Orloff

ESTATE PLANNING TO PROTECT GENERATIONAL WEALTH TRANSFERS:

Lessons from *The Gilded Age*

BY SHIRA SHAPIRO AND STEVEN ORLOFF

HBO's *The Gilded Age* dramatizes the privileged lives of some of America's wealthiest families in late 19th century New York City. In U.S. history, the Gilded Age covers the 1870s to the late 1890s. Rapid economic growth defined this era, which fostered both materialistic excess and political corruption – and makes for the perfect dramatic screenplay. Famous families from this period include the Rockefellers, Carnegies, Vanderbilts, and Astors.

Julian Fellowes, who is best known for *Downton Abbey*, created this newer historical drama series. While *Downton* followed the Crawfords, an upper-class titled and landed-gentry family, *The Gilded Age* highlights America's nouveau riche. Its protagonists acquired extreme wealth from new and booming industries such as shipping, railroads, oil, and banking. These individuals thus did not inherit their fortunes from generations of titled (male) heirs – they built them from the ground up.

Gilded Age magnates left industrial, real estate, and cultural legacies that forever changed American society. Nearly a century and a half later, many American landmarks still bear their names, such as Rockefeller Center, Carnegie Hall, Vanderbilt University, and the Waldorf Astoria. Yet, remarkably, many of these historical elite failed to leave a similar legacy of generational wealth.

For example, once America's second wealthiest family, the Vanderbilts built their fortune through a shipping and railroad empire, with their patriarch Cornelius at the helm. At its height, the family's wealth was estimated at $200 million in 1877, which is equivalent to $105 billion today. Despite its potential for astronomical growth, the wealth dwindled with each generation. In 2019, the Vanderbilt's celebrity heir, CNN's Anderson Cooper, inherited only $1.5 million from his mother, Gloria, Cornelius Vanderbilt's great-great-granddaughter. Even before her death, Cooper had been vocal that despite the Vanderbilt name, financial legacy, and wide speculation about a lasting, massive fortune, there "was no trust fund."[1]

The exact terms of each Vanderbilt estate plan are not entirely known; however, it is understood that several factors depleted the family fortune. Notably, the Vanderbilts lacked a strategic and long-lasting estate plan. This permitted directionless, spendthrift heirs and unchecked family conflicts to drain assets over time. Likewise, the Pulitzer family fortune, of the same gilded era, did not survive ongoing generational transfers. Joseph Pulitzer is known for the Pulitzer Prize and for starting the renowned Columbia Journalism School. Yet, only two generations after his death, a grandson infamously lost the bulk of the fortune in a Florida orange grove investment, having failed to diversify the once vast estate.

These financial falls from grace are not simply hit television fodder. The historical failure to sustain generational wealth can greatly inform modern estate planning. For example, the Vanderbilts highlight the missed opportunity to control excess spending by future generations. Well-thought-out trust and estate plans can limit such expenses that go beyond what is necessary for a beneficiary's support, maintenance, medical care, and education. Trustees or trust protectors can consider a beneficiary's accustomed standard of living, income, and other resources, and even philanthropic goals, while protecting against lavish waste. Chosen well, these fiduciaries become caretakers of a family's financial legacy. Critically, it is not enough to appoint a responsible trustee or trustees upfront. Trustee *succession* provisions are equally important. Purposeful succession terms protect from any unexpected transfer of trustee power to an inadequate or non-vetted successor.

Indeed, not all Gilded Age families squandered the family riches. The Rockefellers are particularly lauded for their generational wealth preservation. John D. Rockefeller, an American oil industry business magnate, founded Standard Oil Company in 1870, now ExxonMobil and Chevron. The Rockefellers used irrevocable trusts to hold most of their assets. This prevented wasteful spending by future heirs. If drafted correctly, such trusts may also remove assets from one's taxable estate, eliminating the need for heirs to pay large future estate taxes. The Rockefellers also established business succession plans and incorporated philanthropic goals that its beneficiaries continue to abide by today. Likewise, the Mellon family (of BNY Mellon bank), has maintained an estimated $12 billion fortune since Thomas Mellon's death in 1908. Thomas Mellon's estate plan apparently both preserved wealth transfers through strategic planning and encouraged entrepreneurship through protected investments in the next generation.

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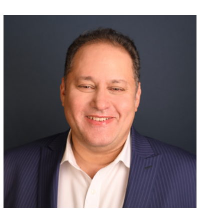
[1] Zurilla, Christie, LOS ANGELES TIMES, July 2, 2019, *Gloria Vanderbilt told Anderson Cooper not to expect a trust fund. He got the estate instead.*

You need not be a Rockefeller or Mellon to safeguard generational wealth transfer. Modern estate planning is not, nor ever was, just for the gilded. Both then and now, a sound legal structure with financial safeguards is key. A strategic estate plan, including trust planning, protects family asset transfers, regardless of the amount. And a trust need not be irrevocable to ensure generational stability. For many families, education regarding wealth transfer, capital preservation, and family core values and goals can prepare the next generation. Bequeathing such financial literacy is as critical as giving the dollars themselves. For example, family financial summits or other similar family meetings allow older generations to share financial goals, expectations about inheritance, responsibilities, and core family goals.

Generation-skipping trust (GST) planning can also help preserve generational wealth transfer. GSTs permit you to leave assets to grandchildren or other beneficiaries at least 37.5 years younger. Skipping a generation can avoid paying federal estate taxes twice on inherited assets — i.e., when passing to both the second generation and third generation. Further, trust provisions can offer longstanding creditor protection. Most creditors, including divorcing parties, cannot access trust-protected funds. And while certain rules prevent perpetual trusts (e.g., the infamous Rule Against Perpetuities), many states have either repealed or amended such laws. Estate planners can help navigate such jurisdictional limitations and draft plans for future generations.

Although it could certainly support another hit HBO series, estate planners are not clairvoyants with trusts and wills as their crystal balls. But a forward-thinking estate plan can nonetheless protect assets from future generational unknowns, rogue beneficiaries, or even poor financial decisions from well-meaning heirs. Estate planning should consider immediate wealth transfer and generational wealth preservation, education, and financial management. Gilded or not, this gift of a sound financial legacy will benefit your future generations to come.

SHIRA SHAPIRO focuses her practice on helping clients successfully navigate the complex world of estate planning, inheritance, and wealth management conflicts.



STEVEN ORLOFF co-chairs the Wealth Planning, Administration, and Fiduciary Disputes Group and has significant experience guiding clients through the estate, tax, and corporate issues involved in succession planning.

A strategic estate plan, including trust planning, protects family asset transfers, regardless of the amount.

COMMUNICATING YOUR ESTATE PLAN:

A HELPFUL TOOL, NOT A FIX-ALL

BY DENISE RAHNE AND THAD TITZE

In the first 10 minutes of Netflix's *The Gentleman*, the grieving heirs of Archibald Horniman are shocked when it is revealed that he has left his sizeable estate almost entirely to his second-born son, to the exclusion of his other children. In HBO's *Succession*, the entire series builds toward a surprise reveal of who will inherit and control Logan Roy's estate and media empire. Alongside surprised and unhappy heirs and beneficiaries, lawyers and the threat of litigation feature prominently in these narratives.

It is easy to see how the element of surprise in a generational wealth transfer can make for good TV. But these and other similar stories prompt the question: Would transparency with heirs and beneficiaries prevent or reduce family conflict and the likelihood of litigation? Or might it create the very same conflict that it seeks to avoid? This article discusses some of the advantages and strategic considerations of sharing estate planning details with the next generation while recognizing that transparency is not a fix-all solution and may, in some cases, cause or exacerbate existing disagreements.

Before examining varying approaches to transparency, three ethical and legal principles should guide the discussion.

- First, communicating any part of a person's estate plan is entirely up to that person. No person should feel compelled to share any details about their wealth or estate plans with anyone. They may choose to keep this information entirely confidential until death or other events require some limited disclosure to impacted individuals. Their attorneys are ethically bound to maintain client confidence during and, to a large degree, after representation.

- Second, early communications about a person's estate plan do not necessarily make the estate plan itself any more or less valid. Put differently, sharing a defective estate plan while a person is still alive does not fix any problems with the plan (although it may offer an opportunity to fix any issues while the testator is alive and competent).

- Third, any person can modify their estate plan at any time prior to death, so long as the person understands the changes, knows the nature and extent of their assets, and understands who their heirs and beneficiaries are. This is the case even if they have already communicated plans that differ from their final plan.

If a person decides to share some information about an estate plan, this communication can take various forms and levels of specificity, depending on family dynamics. At a basic level, a person could communicate that a plan exists and that it has been thoughtfully considered, ideally based upon the advice of counsel and other wealth and tax advisors. Even knowing from the testator that a plan exists can help avoid future conflict, including allegations that a person did not knowingly create a plan. A person could, additionally, communicate the general framework of their estate plan, such as how the estate will be divided and who will take on various roles, such as medical and financial power of attorney, successor trustee, and personal representative. When sharing these details, it can be helpful for a person to explain the *why* behind these decisions. Even if a family member disagrees, communicating the rationale behind estate planning decisions can preempt future claims such as "Mom wouldn't have wanted it this way" or "Dad would never have treated the siblings differently."

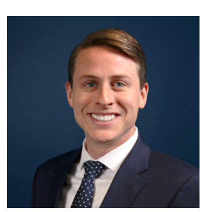
This approach can be effective, but it also can invite risk. Contradictory explanations, or even explanations that are unclear enough to be open to misinterpretation, can reinforce mistaken beliefs and enable a factual basis for an otherwise more generalized grievance. And sometimes even when communication is clear, the heirs may simply only hear what they want to hear. Thus, any communication about estate planning should be done thoughtfully, strategically, and with attention to detail—not just revealed on a whim after Thanksgiving dinner.

A person who wishes to communicate their estate plan to their family may do so directly, either by meeting with or writing to their family and interested parties. They may also rely on an attorney—the person who advised the plan or other counsel—to convey certain details to family members at the person's direction. In some instances, the person could involve an attorney or other professional to facilitate a family meeting either to proactively communicate part of the estate plan or dispel concerns or misconceptions. Communication in any form it is delivered can address or preempt specific points of conflict, so long as it is appropriately tailored to the levels of trust and the dynamics among family members. And if a person decides to share information about their estate plan with family members and then later decides to change their estate plan, it may be prudent to share the updated plan with their family to avoid surprise.

Transparency alone will not preempt every estate and wealth dispute. And in some cases, communicating a person's plans may stir up conflict that the person would rather not live to see. It may also provide an opening for unhappy family members to lobby or improperly influence the testator or other family members. Whether transparency will help resolve conflict in the long term is best gauged by the person making the plan who understands their family's unique dynamics.

Strategies to avoid wealth and estate litigation are especially important considering the ongoing challenges inherent in generational wealth transfer. More wealth than ever before is expected to be transferred from aging generations to families who are increasingly fractured and blended due to divorce and remarriage rates. These conditions make it even more important to take practical steps to reduce future conflict and ensure that transfers of wealth occur according to the wishes of those making decisions during their lifetime. Whether you seek strategies to avoid future conflict or resolve a wealth dispute, or if you just have questions about how to do so, please contact a member of our Wealth Planning and Disputes Group.

DENISE RAHNE co-chairs the Wealth Planning, Administration, and Fiduciary Disputes Group and focuses her practice on disputes involving estates, trusts, fiduciaries, shareholders, and closely-held corporations.



THAD TITZE is an associate attorney whose practice areas include business litigation, American Indian law and policy, wealth planning, administration, and disputes, personal injury, and medical malpractice.

ANNE PAAPE

The Spotlight had the pleasure of sitting down with Anne Paape, managing director and senior fiduciary counsel at Cresset and Cresset Trust Company, to talk about the historic transfer of wealth many countries are undergoing, how Cresset helps clients navigate those challenges, and why she is doing the "polar opposite" of what she thought she would do when she went to law school.

SPOTLIGHT Q&A

SPOTLIGHT: Was this the role you planned on when you went to law school?

ANNE PAAPE: This is the exact *opposite* of what I planned. My mom is a CPA and worked in the personal tax and trusts and estate world, and I wanted nothing to do with it. I wanted to be a criminal-defense attorney. I was going to work on death-penalty cases — work with the Innocence Project. But I ended up working for Judge [Margaret] Marrinan in probate court in Ramsey County one summer, and I loved it. After law school, I went to a small firm where I did some criminal defense and family law cases, but also did some estate planning and came to realize that was the favorite part of my day. In order to do higher-end and more sophisticated planning, I went to a larger firm for about 12 years. And from there, I came in-house to Meristem Family Wealth. They had just started a trust company and wanted someone with fiduciary and planning chops to give it shape and give them more credibility with both business development and regulators. After Meristem was acquired by Cresset in 2022, my role expanded, but my family law, criminal law, and planning experience still comes into play, as even high-net-worth clients face these types of issues, and I can help navigate them through them or call on my rolodex to find them the help they need.

SPOTLIGHT: Describe your role at Cresset now.

ANNE PAAPE: I work in three different parts of the organization. First, my biggest role is to help drive business and run the trust company in South Dakota. Second, I still work with clients in our wealth strategies division. There, I bring my expertise in helping them with estate planning, navigating litigation, estate administrations that are complicated, or go through a divorce or prenup process. And third, I sit on our legal team. As part of that team, I participate in due diligence if we are doing an M&A transaction, particularly if they involve a trust company or some regulated piece of the industry where I can provide value.

SPOTLIGHT: Describe Cresset's sweet spot when it comes to its ideal clients.

ANNE PAAPE: We are really a great fit for a broad spectrum of clients. We have 18 offices across the country and offer flat and assets under management-based fees. Our two founders were hugely successful in private equity. In retirement, they could not find the kind of comprehensive services and investment options that they needed, so they decided to create an organization that would provide their families, and families like theirs, what they envisioned. As a result, we are very business-owner friendly. Our founders understand what it is like to have years without a lot of traditional liquidity and to not have access to the level of sophisticated advice they needed because of AUM minimums.

For example, we have a specific program called Cresset Catalyst, geared toward pre-transactional professionals — those who run a business but haven't had their first liquidity event yet, but will soon. We have people on staff who can help them plan for the exit, think through structuring a deal, tax impacts, put them in touch with investment bankers or attorneys, help them evaluate their first letter of intent, prepare pre-transaction estate plans, and understand the waterfall and what that will mean for them post-transaction. The kind of tax planning and practical planning that entrepreneurs really need. Similarly, our sports and entertainment practice can provide the complex planning and support an athlete needs, while they may have less AUM than would allow for that level of planning elsewhere. Both of these programs are typically structured as flat-fee engagements.

On the more traditional side of our business, we become especially valuable to those families with investable assets between $40 million and $500 million, but we also have clients far in excess of that. We lead with high-class investments and comprehensive family office services (think planning, tax, governance, bill pay, etc.). We have investment capabilities that are as sophisticated as they get. We don't just offer stocks and bonds, but private equity opportunities, real estate investments, coinvests, qualified opportunity zone funds — really all the investment options that the most sophisticated of investors need in their portfolios.

SPOTLIGHT: Cresset has a trust company in South Dakota, as you mentioned. Why do so many clients want trusts established there?

ANNE PAAPE: South Dakota is to trusts as Delaware is to corporations — it is an elite trust jurisdiction. Because the jurisprudence in South Dakota has been around for about 30 years now, we know what works and what doesn't — what will pass an audit by the IRS, for instance. It has the strongest domestic asset-protection laws. There is no state income tax. And anything that goes to court is sealed and private until it goes to the Supreme Court. Those appear to be the core drivers that bring people to South Dakota. South Dakota also takes their regulatory role incredibly seriously, so that gives me (and our clients) complete confidence that we're administering our trusts in a way that would withstand any scrutiny. This is not necessarily the case in some other states enacting laws simply trying to drive more trust business there.

SPOTLIGHT: What do you see are some of the biggest challenges for individuals and families as they navigate these wealth transfers?

ANNE PAAPE: Over the past 10 years, when this transfer of wealth really started to increase, we have experienced these three challenges the most. First, some families have unrealistic expectations about what is coming. Sometimes, parents have limited what their children will receive from their estate, or, on the other extreme, they are expecting their children to run a foundation or a family business that they have no knowledge of and are not prepared for. Or funds have diluted over generations without adequately preparing the generation that won't have as much. Similarly, there is often a complete lack of transparency. One generation does not want the next to know the extent of their wealth or what the plans are for it. This can create challenges when the next generation is surprised or has questions with no one left to provide answers. And third, we often see messy planning — even with very large, otherwise sophisticated estates. It is not uncommon for us to see wealthy families with documents from decades ago, and they have not consulted with their estate attorneys for years, and there often has not been proper titling to effectuate their plan. Or they had very aggressive planning that has fallen out of favor and now carries risks if it isn't fixed. It can be a real mess that is sometimes only unearthed when someone dies. Or when a firm like ours gets involved.

SPOTLIGHT: How does Cresset help its clients with these challenges?

ANNE PAAPE: We have a whole department that oversees family governance and education and can help with disputes, but we would rather have them help with education on the front end and avoid the disputes altogether. They are honestly some of my most talented teammates. In addition, our wealth strategies team often sorts out the actual planning pitfalls and can work with the family to put stronger planning in place or just to understand the plan they have. We also have thousands of clients where we can say, "Well, we've seen other clients deal with this, and this is how they dealt with it."

If there is an active dispute going on, we can serve as a support team, whether we're helping gather documents or helping them navigate and understand what a complaint says. We can also interface with their lawyers, review legal bills, and serve as an educated go-between.

It's really important that our clients have a multidisciplinary team that is looking out for them. And Cresset is designed to provide that to our clients. I can't imagine offering comprehensive wealth management any other way after being here.

Cresset refers to Cresset Capital Management and all of its subsidiaries and affiliates. Cresset Asset Management, LLC, also conducting advisory business under the name of TRUE Cresset Sports and Entertainment, provides investment advisory, family office, and other services to individuals, families, and institutional clients. Cresset Partners, LLC, provides investment advisory services strictly to investment vehicles investing in private equity, real estate and other investment opportunities. Cresset Asset Management, LLC, and Cresset Partners, LLC, are SEC registered investment advisors.

If you would like to nominate yourself or someone else to be featured in a future Spotlight profile, please let us know at **all_marketing@robinskaplan.com**. We look forward to showcasing more of the exceptional work of our readers.

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