Bridging the Gap: Estate Planning for African Americans

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This Estate Planning article recommends culturally competent, client-focused strategies and practical tools for estate planners with African American clients, to address wealth barriers, institutional mistrust, legacy goals, and other issues that may influence planning for even wealthy clients.

INTRODUCTION

As estate planning practitioners living in a diverse country, it is imperative to understand and become comfortable with the idea that different people may require differentiated approaches, practices, and products. Utilizing a client-centered approach creates space for the nuance that makes each client unique, and for practitioners to become more effective serving people who may have different lived experiences than they do. Prioritizing time to listen and learn about the clients that practitioners serve and advise cultivates rapport and trust, moving the work beyond purely transactional interactions.

While the above is the gold standard planning approach for all clients, this article will explore these concepts in the context of advising African American clients. Though the article centers a specific group, the authors acknowledge the experiences, perspectives, and planning needs amongst this population are not monolithic.

Demographics

The United States African American population grew to 49.2 million in 2024, representing growth of 36% since 2000, and a new high.[1] This segment of the population is relatively young and growing in educational attainment, especially amongst African American women.[2] Additionally, while the number of businesses started by African Americans is growing, at 3%, they make up a small share of US businesses.[3] Furthermore, according to 2023 data, Black homeownership rates were 45.9%, compared to 73.8% for white Americans, representing a 2.7% gain over the last decade, though the gap persists.[4] Growth in these areas has led to a 114% increase in buying power over the last few decades.[5] Despite significant contributions to American society, however, many African Americans continue to experience systemic barriers to building and preserving wealth.[6] This is relevant to many African American clients, regardless of where on the wealth spectrum they may be.

Historical Context and Impact

It is difficult to understand today's planning challenges for African American families without looking backward. Current wealth disparities and estate planning behaviors are shaped by history.[7] Many African American families have a shared experience resulting from this history, even if their specific responses and outcomes to those experiences vary.

The institution of slavery prevented most African American families from owning and passing on property for generations.[8] Even after emancipation, new barriers emerged to preserve racialized land inequality. Through the Homestead Acts and related land policies, an estimated 246 million acres of public land was transferred primarily to white families, while African Americans were largely excluded or deemed ineligible, once again causing them to miss out on wealth-building opportunities.[9] Discriminatory policies and practices evolved and continued into the early 20th century with Jim Crow laws that enforced racial segregation and restricted where African American people could live and own property.

Violence was similarly used to destroy African American property. The massacre that took place in Tulsa's Greenwood District in 1921 is one such example.[10] Lynching was also a tactic used to kill and scare African American men and steal their land.[11] Beyond that, exclusion from the GI Bill, redlining,[12] and predatory lending practices further impacted African Americans' ability to own land and homes, gain equity, and accumulate wealth to pass on.[13] In fact, it is estimated that between 1910 and 1997, African American farmers lost nearly 90% of their land.[14]

The cumulative impact of these laws, policies, and practices has resulted in a significant wealth gap.[15] For instance, the typical white household currently has about 6 times more wealth than

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the typical Black household.[16] Stated another way, this means that for every $100 of wealth held by white families, Black families held merely $15, even with an overall increase in Black wealth.[17] Further, white Americans are more likely to receive inheritances.[18] Nearly 30% of white Americans reported receiving an inheritance compared to about 10% for African American families.[19] These types of transfers, more than indicators like education, income, and household structure, account for a large portion of the racial wealth gap.[20]

come. Estate planning is a critical process for all families seeking to secure their financial future and create lasting legacies. Beyond just planning for asset distribution, a comprehensive plan can include financial support for surviving loved ones, guardianship decisions for minor children, and plans for incapacity during life.[25] With such important decisions to make, practitioners who are both client-centered and knowledgeable of this history and its impact, are at an advantage when working with, and attracting, African American clients.

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Consequently, a persistent gap in trust exists between many African Americans descended from the enslaved, and the institutions that historically structured and enforced racial inequality.[21] This mistrust is not confined to individuals with direct personal experiences of discrimination; rather, historical and contemporary injustices are sufficiently pervasive that their effects extend across generations and communities.[22] Socioeconomic mobility or individual success does not negate exposure to bias, profiling, or institutional vulnerability.[23] Inevitably, the cumulative effects of historical injustice, intergenerational trauma, and enduring structural inequality can have long-term effects on African Americans, and continue to influence contemporary financial attitudes, behaviors, risk perceptions, and decision-making related to wealth and estate planning even for those not directly affected by such inequities.[24]

PRACTITIONER KNOWLEDGE AND UNDERSTANDING IN ESTATE PLANNING

While estate and financial planning alone cannot erase these gaps, with the help and guidance of skillful advisers, they can build bridges and help African American families protect wealth, honor legacy, and empower generations to

Learning about a new culture and holding open conversations requires thoughtful consideration and foundational knowledge. There are practitioners who know very little about this history. Others may know about some of the information shared but struggle to reconcile with the weight of this history and its continued impact. Though understanding the world through a different lens can require effort, it may be helpful to focus on the narrow goal of better serving estate planning clients to avoid the friction that a broader conversation may trigger. Fortunately, to more effectively serve African American families, it is not necessary to become a history expert. Awareness, acknowledgment, and a willingness to listen and ask thoughtful, probing questions can help to build trust between African American clients and begin to ameliorate the trust gap.

For example, clients may show up to an estate planning consultation curious but guarded in a protective shield of distrust. Despite wanting help, they may not initially be forthcoming with private information about their family or providing you with sensitive information about their finances. Instead of being offended or determining they are not serious about planning, suspend judgment and any preconceived perceptions that may arise. This creates space for you to ask more questions, listen, learn their story, and acknowledge concerns they bring up.[26] Alternatively, they may have heard about the benefits of estate planning but believe it is not for "people like them" or that planning is irrelevant because "they don't have enough assets," even if such sentiments are never uttered out loud. Instead of letting those ideas stand, educate them about what estate planning is and how you can help them protect what is important to them. Clarify concepts and terminology as necessary. Empower them with knowledge, and then they can decide whether they want to move forward.

Practitioners need not share the lived experiences of their African American clients to better serve them. Learning of their unique experiences through candid conversation to better understand their perspective can be helpful when providing guidance to current or potential clients. This article will endeavor to connect historical context and continuing effects with case studies and recommendations practitioners may find useful with African American clients.

THE OBJECTIVE: INCREASE ESTATE PLANNING ENGAGEMENT

Data show that African Americans think it is very important to have an estate plan, yet 76% of African Americans do not have a will . This is almost double the number of white Americans without a will.[27] Sometimes this can be intentional. The reluctance to formalize plans for land can stem from the distrust some African Americans, particularly in the south, still harbor for legal and financial systems and the people who represent them.[28] Sometimes, the lack of planning is due to the mistaken idea that land will just be inherited and remain in the family indefinitely so long as they reside there, maintain the land, and pay taxes on time. Both approaches exacerbate the problem of heirs' property, which is land acquired by heirs through intestacy that is held as tenants in common. This ownership structure often prevents wealth accumulation because it results in partition and forced sales as opposed to intergenerational transfer.

Whether talking about land or a home, often the largest asset for African

American families, a failure to clear title can wipe out a family's wealth in one or two generations.[29] For many African American families, homes and land may represent more than just money or wealth. Ownership can represent strength, resilience and a physical manifestation of what families have overcome, despite the historical context shared earlier. Such feelings may play into their estate planning goals, so it is imperative for practitioners to listen to what clients want and value, then use that information to design a plan that helps them meet their goals.

Case Study: An African American couple comes to see you regarding land left to the husband and his four siblings by their parents. The land has been in his family for almost 80 years, and his parents want to keep it that way. He has heard stories of land being stolen by courts and developers and wants to avoid such outcomes. You acknowledge his concerns and share what you have learned about heirs' property. Can you imagine how this couple would feel coming to you for guidance and realizing that you are already somewhat aware of this problem? Your knowledge and awareness now provide a foundation for trust that you can build upon by providing relevant guidance and solutions.

You might review options like the use of a trust, a land trust, a limited liability company, even a tenancy in common agreement that memorializes key aspects of the arrangement. Consider explaining the pros and cons of each approach and allowing time for questions. All options are designed to result in clear titles, keeping interests within the family if so desired, and avoiding court proceedings. Finally, you might offer to host a meeting with the husband's siblings so they can make an informed decision together. Clients would likely find this preferable to taking chances with intestacy. It would be prudent to address issues of possible conflicts of interest, joint representation, etc.

Other reasons African American families may engage estate planning services less, include the cost,[30] the lack of African American/trustworthy attorneys,[31] feeling they do not have enough assets,[32] believing they are too young,[33] preferring not to think about death,[34] and a lack of estate planning knowledge.[35] Many of these concerns can be addressed with education. Workshops (virtual or in person) and written materials can aid in clarifying what estate planning is and its role in protecting assets and loved ones. For some African American families, churches are a great place to provide this information. Black churches are integral parts of the communities in which they are based.[36] You will likely have to build a relationship with the pastor or church leadership first, however.

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Dialogue should be based on the shared goal of improving the quality of services provided to African American clients. The goal is to bridge any gaps in understanding, terminology, and address the specific needs and concerns when it comes to estate planning. But a further positive result, and what should be a broader goal, is to increase the number of African American clients served by estate planning attorneys. Whether or not individual advisers seek this broader societal goal, the stepping stones of creating estate and financial plans for African American families, can, one by one, make a broader impact on improving wealth transmission, the creation of legacies, and improve the long-term wealth impact on African Americans as a whole. That will help mitigate the significant wealth and planning disparities between African American families and other American families. Success may be the result of many small steps, repeated on a regular basis.

Perceptions of Client Wealth as Insufficient for Estate Planning Purposes

Estate planning, because of the above circumstances, may be viewed as an endeavor only for those with significant wealth, complex assets, and the need for legal structures like trusts. For many African American families, their misperception of what constitutes "enough" wealth to justify estate planning, or of their own wealth even, may be a barrier to pursuing the planning that is appropriate for them. This mindset persists and it impacts the approaches to protecting family assets.

The economic reality is that anticipated inheritances of African Americans are substantially less than are the anticipated inheritances of White Americans. Estate planning, especially the use of trusts, is often seen as something appropriate for the wealthy. The idea that wills are sufficient and trusts are unnecessary is a product of misunderstandings.

Every family, regardless of net worth, has something worth protecting—be it a home, savings, or cherished possessions. It might be helpful to begin the process by informing your clients of how and why a particular level of planning is appropriate for them. This conversation underscores the need to demystify estate planning and make it accessible to all families. Trusts and other legal tools are not just for the rich—they are for anyone who wants to protect their legacy and ensure their wishes are honored. As stated previously, education and outreach are essential to shift perceptions and empower African American families to take control of their financial futures.

In the African American community, attorneys can often be associated with negative experiences—especially when it comes to the criminal justice system. Estate planning attorneys, on the other hand, may be seen as serving wealthy or white families. It might also be helpful if other professionals (financial planners, insurance agents, accountants) serve as a catalyst for this discussion and provide encouragement to proceed with planning. In fact, a 2024 study found that African American adults who used the services of a financial planner were significantly more likely to engage in estate planning services as well.[37] Additionally, they found that African Americans who received an inheritance, attended

church regularly, and owned insurance policies were associated with engaging estate planning services. Maintaining a network of qualified and trusted professionals is a valuable support when working with African American families.[38]

Finally, stressing the importance of protecting a "legacy" may resonate more favorably than common themes of tax minimization or probate avoidance. The conversation and end goal may be the same, but different terminology may provide comfort, and facilitate progress, for African American clients initially.

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Estate planning is about more than wealth—it's about security, legacy, and peace of mind. By challenging societal narratives and providing culturally competent guidance, professionals can help African American families see the value in planning for the future, no matter the size of their estate.

Creating a Legacy

When an estate planner hears a term like "legacy trust," generation skipping transfer ("GST") tax planning, dynasty trusts, and creating trusts in jurisdictions that have long durations, comes to mind. When a client uses this term, however, they might be trying to convey something completely different. Cultural and historic developments, along with personal values may have the adviser and the African American client using terminology that is different.

A "Legacy Trust" may be a trust designed to address a range of family, community, social and charitable goals for as long as feasible. Listening to your client will help you know what they mean and how you can help. Consider the following:

A trust template (with concepts that could be adapted for clients of various wealth levels) to accomplish many client objectives may be feasible: a safety net to assist a broad list of family members in the event of medical or other emergency, charity (with family involvement to direct donations), perhaps certain distributions of income, dynastic in nature and term, etc.[39] This type of Legacy Trust could be set up where other family members' estate plans pay into the same trust to avoid the need for duplicative structures and costs. Other family members could use life insurance on their lives to also fund the Family Legacy trust at their passing. By using sample language and a planning concept, this could create a cost-effective plan for a much lower wealth or lower income client. Sample language could be developed for common scenarios so that someone could merely provide the sample language to an attorney and say that they want a "Legacy Trust" and here is the language to add to a basic dynasty trust to achieve that. This is all subject to modification for each person, but the following provides a sample framework:

- Create an irrevocable trust. For those with lower net wealth, that could include an irrevocable trust created on death under a will or revocable trust.
- List beneficiaries by tier:
  1. Children and grandchildren could receive primary consideration. Explain the goal for distributions – e.g. to provide supplement to help support but not total support, to encourage or help create a business or obtain, a college or more advanced degree, etc. whatever the client wants. This language should be precatory, not mandatory.
  2. Other family members including future descendants and list (e.g. siblings, Aunt Dana, whoever the client wants) who shall receive secondary consideration. Such distributions could be, for example, to help in an emergency or with medical care or whatever the client wants. This language should be precatory, not mandatory.
  3. Charity and community could receive third level considerations. This could state client wishes to help the community or specific organizations or causes. Exercise caution if distributions are to be made to community organizations that do not qualify as charities. For charity, if the client wishes one or more adult children could be required to approve the distribution. Wealthier clients may benefit from trusts that have favorable tax benefits (e.g. a CRUT/DAF plan).
- Appoint a "Legacy Advisory Committee." This could consist of whomever the client is comfortable with and can be easily drafted to continue over time. It could be:
  - The eldest child or a named child, followed by the eldest child when the named child cannot serve.
  - Another family member, e.g. a sibling or whoever the client feels close to and comfortable with carrying out their wishes.
  - Perhaps someone from the community, a charity, or even a religious adviser.
- The above board could merely suggest to the trustee what to distribute or actually have distribution powers if in a state that permits distribution trustees or directors.
- The above trust would continue for as long as state law permits.
- Appoint a trust protector to serve as a check and balance on the above.

Case Study: An African American client told her estate planner: "I want to pass on generational wealth." An estate planner without an understanding of the African American experience may interpret this to simply mean a trust for grandchildren and perhaps later generations. But the meaning and intent may be more profound. The client's request may be meant to emphasize the importance of legacy—a term that seems to resonate deeply within the African American community. What the client really wanted was to do more than merely transfer assets to her children and grandchildren. She wants to create a legacy that empowers future

generations to succeed economically, socially, and emotionally. On a more esoteric level, she may hope to break historical cycles of bias, failure, etc. to impact her heirs and the community more broadly. Both the lawyer and client will need to engage in dialogue. The lawyer will need to ask probing questions to get more specifics from the client, while also explaining how her goals can be met with estate planning tools. Some back and forth will likely be necessary before coming to a consensus on a design that is doable and that works for the client.

> The use of revocable trusts as a means to avoid the court system, which many African Americans may perceive as untrustworthy or biased, might be a common technique to apply

Legacy, in this context, may be preserved in many ways:

- Long-term trusts with appropriate safeguards to preserve that legacy.
- Addressing wealth level appropriate asset protection planning, tax planning, etc.
- Using an institutional trustee if there is concern over how descendants might administer the trust and the size of the trust will support this.
- Creating checks and balances on the institution if the client is mistrustful of institutions (see below).
- Precatory language may be included in the trust instrument to memorialize the client's hopes and wishes for the plan. The point of merely considering and not requiring is to avoid unduly restricting decisions a trustee might best make in the future if circumstances change. Despite being non-binding, a personalized suggestion can provide valuable guidance to the trustee now and in the future. Each client may craft language somewhat unique to their experiences, but the memorialization of their thoughts in the governing legal document may provide considerable comfort that their wishes and hopes will be addressed when they no longer can direct expenditures themselves.
  - *Example:* "I suggest, but do not require, that the Trustee, in making distribution decisions, favor expenditures that help the Beneficiaries grow educationally and spiritually, become independent financially, and foster the Beneficiaries giving back to African American institutions and charities to themselves make an impact on reducing the generational trauma that so many have experienced."
- Providing for a charitable endowment which can range, depending on wealth level and interest, from a simple donor advised fund to a private foundation. Alternatively, a donation may simply be made to create a perpetual gift or scholarship program at a specified charity in the family name. Whatever approach is used including precatory language in the legal instrument, giving some detail as to the client's wishes for that charitable effort may memorialize her wishes for future generations.
  - *Example:* Most trusts are designed for people or charities, but if a trust is not intended to qualify for a particular charitable contribution tax benefit trusts can include both charitable and non-charitable beneficiaries. So, for example, a sprinkle trust could be formed on the client's death for all descendants. Income and principal can be paid among, or "sprinkled", to any or even all heirs to accomplish the goals the client has set forth. But charity can be included as a permissible beneficiary and when economically feasible distributions could be made to charity as well. The client might even take a further step of having a majority of adult heirs have to approve charitable distributions. That will ensure the protection of the wealth transfer for their benefit, but it will also involve them in the decision to give charity, which itself may be part of the values the client wishes to transmit to her heirs.
- Guide the client to write a Letter of Instruction or so-called "ethical will" outlining goals and hopes for descendants. Even if precatory language is added to a document, as suggested above, that language should be limited in scope and broad or flexible so that it does not excessively constrain fiduciaries in the future, especially as circumstances evolve. In contrast, a letter of instruction which is not binding can be used to communicate in as much detail as the client wishes her hopes and aspirations. A letter of instruction may be a resource that professional advisers, fiduciaries and especially heirs read and re-read many times in future years.
  - **Case Study:** An African American client seeking to leave a legacy for children and grandchildren, and minimize the risk of his second spouse potentially spending down the estate and thereby limiting the generational wealth to be passed on might memorialize all of these wishes in a letter of instruction. This might entail one or more personal letters of instruction explaining some of his reasoning and thoughts for each heir (wife, children, and grandchildren). For example, assume that he had a financial adviser create detailed models to assure adequate resources are available for his wife, and that she is protected and provided for. Making that statement may be helpful to show the care put into this process and that it was not done in malice. In other words, a more heart-felt rather than technical and financially specific letter may be better. The end result might include some bequests on husband's death to a trust for all heirs and a portion of the estate bequeathed to a marital

trust for the surviving wife that must provide income payments to her monthly (to comply with QTIP tax law requirements), but leaves open principal payments to protect her, but which are also constrained by certain precatory language to endeavor to preserve those funds for generational wealth transfer on the wife's later death. This approach can provide an early legacy to heirs to boost their lives, protect the spouse's lifestyle with sufficient income distributions, protect the spouse from unforeseeable emergencies by permitting principal invasion, protect the corpus of the marital trust with an independent trustee and guidelines for suggested distributions. This all may require more thought and tailoring then a typical plan, but those extra steps may accomplish all of the client's goals.

- Incorporating, as legally appropriate, precatory language into estate planning documents can make clear the client's wishes to heirs. A mere bequest to charity without any descriptive language may not convey the educational impact she intends for her heirs.
  - *Example:* "I make the following bequest to Xavier University of Louisiana (New Orleans, LA) as a historically Black Catholic university known for its excellence in STEM fields. I make this bequest to encourage my descendants to support historically Black colleges and to encourage them to pursue STEM educations if they are willing to do so."
- Making bequests directly to later descendants, such as grandchildren, rather than the more common approach of creating a pot or sprinkle trust for both a child and that child's descendants may be desired. This approach may require separate trusts for the later generation, or if the amounts are not too large rely on custodial accounts for them. A simpler lower cost approach that may accomplish the same objective if the amounts involved are too small to justify a trust may be a bequest of specific dollar amounts to each grandchild, subject only to custodial accounts if a grandchild is a minor at that time. But this may fulfil a personal wish to assure a legacy to those heirs especially if the wishes for the use of those funds are memorialized.
  - **Case Study:** A client wished to benefit specific charities. Options considered included forming a private foundation, but the costs of formation and annual administration must be considered. If the anticipated donation is large enough to warrant creating a foundation that can be pursued. If not, perhaps a Donor Advised Fund ("DAF") may suffice. Another factor to consider is how specialized is the intended charitable goal? Can the charitable intent be carried out through public charities that may be beneficiaries of a DAF? If so, is the cost and administrative burden of a private foundation necessary? Another approach may be to create a fund at a specific charity the client wishes to benefit and have the projects paid for from that fund be decided upon each year by the charity and the adult heirs of the client. That approach may provide the intangible benefit of a particular charity meeting with the heirs to discuss how within that charity's programs the funds should be spent. For example, if the client set up such a fund with a particular African American museum each year the family and representatives of the charity could plan which programs should be funded. If a bequest to a DAF or specific charity is to be made consider that if the client leaves a percentage of her estate to the charity, rather than a dollar amount, it may complicate the formulas for estate distribution, and may trigger reporting to the state's Attorney General who has responsibility for charities. Perhaps bequeathing an IRA account directly to charity may be simpler and provide income tax advantages. Note that while a client can designate a donor-advised fund as the beneficiary of an IRA account to pass on their death, you cannot use IRA funds for donor-advised contributions during your lifetime. This means that while your client can bequeath an IRA to a DAF upon death, they cannot make qualified charitable distributions ("QCDs") to a DAF while alive, although proposals have been made to change this restriction.
  - **Case Study:** A client, seeking to benefit their grandchildren, was considering leaving $1M bequests to each grandchild in a custodial or UGMA/UTMA type account naming his daughter as the custodian. That approach, while simple, provided no tax planning benefits, income or estate, for the client's grandchildren. It provided no asset protection benefits for them either. If the account balance is distributed to a grandchild at age 21 and they are involved in an auto accident, lawsuit or divorce, their entire inheritance could be lost. All of this is contrary to the concept of passing on intergenerational wealth and creating a lasting legacy. Further, if the client's goal was to give his grandchildren a leg up or boost in life, they might squander the money imprudently before they are old enough to understand the implications. He could easily protect the bequests with one or more trusts. If a grandchild becomes successful and this inheritance is held in a trust could become the foundation for all of their own estate planning. UGMA and UTMA accounts are simple and cost nothing to set up, but they are not prudent if the funds involved may become meaningful, and they are not protective

of the intended beneficiary. The proper allocation of generation skipping transfer ("GST") tax exemption, which can only be done in a trust, can facilitate each grandchild passing a continued intergenerational legacy on to their heirs. Another issue to consider is the total estate distribution. Assume the estate was $10 million and there are six grandchildren. The daughter will receive $4 million and her children $6 million. The children would receive more than their own mother. Will that create animosity or discomfort between the children and their own mother? Might that interpersonal aspect undermine the family the client is trying to help and foster? Whatever dollar allocations are decided upon, should the daughter be put in charge of her children's money when they are receiving so much of the inheritance? What if the daughter views the inheritance given to the children as hers and that too creates friction. It turns out that the client learned of UGMA accounts from a friend, but the friend had no idea how much wealth was involved, how it would be allocated or what the impact would be. Ultimately the following plan was adopted. Each grandchild was bequeathed $50,000 on their grandfather's passing so that they would have an immediate gift or legacy from him. The remaining estate was distributed to a trust to benefit the daughter and all her descendants including the grandchildren. An independent institutional trustee was named as trustee with instructions on how the client wanted to help benefit his daughter and grandchildren. This way, everyone was protected, there was no need for tension amongst the family, and the children would receive help with educational and other expenses even during their mother's lifetime

Balancing Family, Community, and Other Goals

While tax and legal planning are important, addressing the human aspects of planning is paramount. So, some decisions should be made from that lens. Clients may choose to make decisions that will be less than optimal from a legal and tax perspective. In such cases the professional adviser should be certain the client understands the potential legal, tax, or other detriments of the desired plan, and if the client duly informed wishes that approach then it should be implemented.

Case Study: A client wished to bequeath $100,000 to each of his siblings and two cousins he grew up with. He felt very strongly that his family was close-knit and their support throughout his lifetime was instrumental in not only his financial success but his general well-being. He felt these gifts would give each family member pleasure and a positive memory he wanted to leave them with. A problem with this approach is that it would trigger a significant state inheritance tax. The attorney explained the inheritance tax costs and several options to possibly circumvent those taxes. One approach might be for the client to make gifts to those desired heirs now while he is alive, but he would have to survive another three years for those gifts to be outside the reach of the tax. Because of current health issues he did not feel that it would be likely. Another approach would be to make a bequest of the dollars involved to one of his children with the child in the future making the gifts. He felt strongly that despite the tax he wanted these gifts to come from his estate and he wrote a personal letter to the family thanking them for all the warmth and support they had given him. He also noted in the letter that their gifts would trigger an inheritance tax so that they would not be surprised by that result.

Case Study: A client told her estate planner that she would like to create "some type of family fund." The practitioner was unclear what she intended. Was this intended for charity, descendants, family more broadly defined, a mixture? After some discussion it was understood that this fund should benefit a list of family members that the client was close with and to whom she had provided some financial assistance. She also wanted to benefit her church and a few local charities she had been active in. Finally, she had hoped that if the bequests to her children and grandchildren did not suffice for their needs that this trust could be accessed to help them. Since estate tax was not an issue, there was no need to create a separate charitable only trust to qualify for a charitable contribution deduction. So, a single pot or sprinkle trust was created listing the specific family members and charities as the primary beneficiaries and all her descendants as secondary beneficiaries if the other trusts she was creating for them were exhausted. Given the vagueness of the dispositive plan, she named two close friends as trustees who understood her wishes, and several successors.

Case Study: The client bequeathed most of his estate in separate trusts for his children naming an institutional trustee to assure that the funds would be professionally managed for his children and future generations. Two of his children had children out of wedlock and he was worried that future children may be born out of wedlock or that someone he was not aware of might assert that they were a child especially if the existence of a valuable trust became known. He reviewed the definitions of "descendant" and "child" in this trust with his attorney and opted to specifically delineate by name precisely who should be included in the definition of descendants as for his children and grandchildren. Anyone not listed by him in the trust could not be treated as a child or grandchild of his. He was confident this would avoid ambiguity or litigation for those two generations. For future generations the definition in the trust would control.

Case Study: Wife was concerned that if she died prematurely her husband might remarry and the new wife might divert assets from their children and grandchildren to herself. A will contract is an agreement spouses sign to obligate them to agree to continue the same estate plan. For example, the will contract may bind each not to change their wills. Will contracts are not an assured guarantee that a plan cannot be modified, but they may provide some

backstop. Another approach which can be used alone or in conjunction with a will contract is to create irrevocable trusts currently and name independent, perhaps institutional trustees, so that the dispositive plan will not be disrupted.

Building Understanding and Trust

Estate and financial planning cannot succeed if the client does not trust the adviser. Planners should strive to understand the cultural factors that influence their clients' decisions. This may call for more focused, deliberate, and empathetic listening and probative questioning than needed for general conversation. Further, advisers should be attentive to both verbal and nonverbal cues clients may provide. though it may require more work up front to build trust and rapport, the ultimate goal is for the adviser and client to work together to gain understanding and clarity so clients receive estate planning support that meets their needs and goals.

This type of communication is clearly a two-way street but the adviser may need to be proactive to foster this. The client should not assume that the adviser should or must know or understand the emotional or historic background that influences the client, but that may need to be communicated clearly to the client. The client must be willing to be patient, explain their concerns, and express thoughts using various descriptive words until the adviser understands clearly what the client intends. That type of conversation may be fostered by the adviser asking questions to guide the client and illustrate what ideas the adviser may find unclear. Several examples of productive dialogue between adviser and client have been illustrated in this article. The client needs to also be understanding of the fact that an adviser who does not share the client's life experiences may have to struggle to understand the deeper meaning of what the client wishes. This process will not only inform both the client and the adviser, but should create a level of trust between them.

Additional Points of Discomfort

Other considerations may create discomfort or concern for the African American estate planning client.

Case Study: A client was wary of trusts. Based on the intake form, the practitioner knew right away that a trust would likely be a better fit for the client. However, instead of just saying so and trying to move forward, despite what the client stated they wanted, the practitioner began asking questions to elicit more information about the client's goals and concerns. The practitioner after listening carefully, sure they had a better understanding of the client's goals and concerns, felt even more confident that a trust would truly be the better vehicle to provide the client with what he wanted. The practitioner asked to offer an alternate approach. Once the client agreed, the practitioner explained what a trust was then proceeded to explain and discuss the pros and cons of bequeathing assets to children and grandchildren by trust, outright distribution, or custodial accounts for minors. The practitioner also explained and acknowledged the potential costly income tax consequences that can accompany trusts, but also how planning could mitigate the impact of compressed trust income tax rates. The client learned how trusts can protect assets from lawsuits, irresponsibility, addiction, and divorce, any of which could wipe out an inheritance. If the client expresses concern that his children lack the knowledge or skill necessary to invest in a diversified portfolio, regularly rebalance that portfolio, or make prudent distribution decisions, the practitioner can acknowledge this concern and then share how an institutional trustee may help with this issues. If the client shows discomfort with that option, possibly because they do not trust the idea of a bank or stranger in that role, the practitioner can present the option of naming a child as co-trustee alongside the institutional trustee and naming a trust protector (e.g. a sibling of the client) who can remove and replace the trust company if they are not responsive to address that issue. This iterative process may well get the client to a solution that works and is comfortable and understood.

Mistrust of the Legal System A central theme for many African Americans is a discomfort, if not a mistrust, of the legal system. This mistrust may influence estate planning decisions. For example, meeting with an estate planning attorney to discuss the legal concepts involved in estate planning may itself be uncomfortable. This discomfort and lack of trust can provide opportunity. Advisers should try to be attuned to the client having different motivating factors than other clients.

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There are many steps to limit potential legal entanglements. The use of revocable trusts as a means to avoid the court system, which many African Americans may perceive as untrustworthy or biased, might incentivize some African American clients to engage in estate planning. Not only as a way to avoid probate, which is a primary driver for many clients, bit also just to avoid the court system in general. This nuanced take could lead to conversation with the African American clients about full funding service options to ensure assets are protected, not merely treating it as a standby trust to be funded by a pour-over will. Proper review of title to assets, especially real estate, and retitling assets, when appropriate to the revocable trust, may even take on more importance.

Other steps might include assuring proper formation and administration of trusts and entities to reduce legal entanglements. Having periodic review meetings can reduce or avoid legal issues. If a plan gets off track it may be relatively easy to correct if done soon after the errors or issues arise. If nothing is done and the client dies a decade later, the damage requiring costly and complex legal entanglements may be the opposite of what the client wished for. But the responsibility of regular review is important for any client wishing

to minimize legal complexities. The frequency of review meetings may depend on the size and complexity of the estate but should always be addressed when there is a change in circumstances.

Mistrust of Financial Institutions The long history of redlining, subprime lending, and exclusion from mainstream financial services and other practices, have left a residue of distrust of the banking system.

Safeguards mentioned above can be placed on institutional trustees or any bank or financial institution that is part of an estate plan. As mentioned above, naming a family member or friend as a co-trustee can provide a check and balance on an institution, as can naming a trust protector. A directed trust structure may be used whereby a family member or other persons can have investment decision authority and not be bound to a single bank or trust company.

Another perspective or consideration of this issue is the client's weighing the discomfort of naming a trust company versus the client's concerns about heirs being imprudent and the risk that may pose to the client wishing to protect and preserve his legacy which may outweigh the discomfort.

Mistrust of Financial Assets. Some African Americans feel more comfortable investing in real estate and businesses as safer and more tangible approaches to building wealth than stocks. Historical events described above, cultural values, and community impact may influence this as well. Some African American clients may have a preference to pass on a home to each heir to assure that heir of home ownership and the financial security that might bring.

Case Study: Dad gifted a house to each of his three children for the reasons stated above. However, formalities were not addressed in terms of filing the required gift tax returns. Also, there were material differences in the values of each home as each child lived in a different community and faced different home prices. Might there be any issues among the children as to the different values of the houses? Should these unequal gifts be equalized? Whatever approach is used, consider a family meeting followed up by a letter documenting the steps taken to address the different values to avoid disputes or ill feelings between the children in the future. If the gift is being planned now and has not been consummated, the father might own each house, or retain a life estate in each house, so that the value of the homes benefit from an income tax basis step up on his death. That needs to be weighed against any state or federal estate tax that might be triggered. Also, should the homes be held in trust or given to the child outright? While a trust may be the preferable answer for protection for lawsuits and possible divorce, and it may also foster the transmission of intergenerational wealth to the descendants of the child, some clients may, for a home in particular, prefer having the child have the pride and knowledge that they alone own their home in their name.

Even Wealthy Clients May Struggle With Some Financial Matters

The mere fact that a client is wealthy or successful doesn't ensure they have the financial knowledge or skill to handle their finances alone or keep them from the reach of those seeking to take advantage of them.

Case Study: Wife indicated that she is worried about taking care of financial matters if Husband becomes incapacitated or predeceases her. She acknowledged that she does not have much knowledge about how their finances are handled, how to budget, or invest because her husband has always handled these things. Several steps could be taken to address these concerns.

The couple currently has dozens of different bank and investment accounts. While it is possible this choice stemmed from the discomfort of trusting any one financial institution, it also creates unnecessary complexity for Wife and whoever may help her. Imagine the work required if an agent under the Husband's durable power of attorney had to act on all those accounts. Also, if the couple wishes to move assets into revocable trusts for the reasons discussed above, it would be a herculean task given the numerous accounts. Attempting to manage this many accounts, especially at a difficult personal time, e.g. following an acute medical event, would cause additional stress and increase the possibility for errors, or worse, elder financial abuse.

The couple might consider consolidating all financial assets with a single institution to simplify the administrative burden of maintaining multiple accounts at different institutions and to reduce the number of active accounts. They confirm before doing so, that the assets they have will all be covered by insurance programs should the institution have financial issues. Once revocable trusts are established and have accounts at the institution of choice, it would also be helpful to Wife and the other successor trustees (i.e., after the Husband and Wife) if they have a primary financial adviser for the accounts at that institution and have an advisory team meeting (them, their selected financial adviser, CPA, key family members, etc.). Building a team around Wife will make it easier and safer for her to address any issues in an emergency.

CONCLUSION

Estate and financial planning professionals should move beyond reliance on technical expertise alone and embrace a deeper understanding of their clients' feelings, beliefs, and lived experiences. By doing so, they can more effectively help many clients. For African American clients this may help build and protect their wealth, create meaningful legacies, and navigate the legal system with greater confidence. As an added benefit, many of the concepts and approaches mentioned in this article can be modified and applied to help better address any client's personal situation whether it be medical condition, mental health issue, cultural background or faith.

End Notes

[1] Pew Research Ctr., "Key Facts About Black Americans" (Feb. 5, 2026), https://www.pewresearch.org/short-reads/2026/02/05/key-facts-about-black-americans/. This article uses the term "African American" for consistency and to emphasize the historical and cultural lineage of Black Americans whose ancestry traces to persons enslaved in the United States. The sources and data cited herein variably use "Black," "African American," or sometimes both. Unless otherwise specified, these terms are used interchangeably to refer to Black Americans in the United States. The authors

recognize that neither term captures the full diversity of identities within the Black diaspora and do not intend to suggest homogeneity.

[2] *Id.*

[3] Pew Research Ctr., "A Look at Black-Owned Businesses in the U.S." (Feb. 12, 2025), https://www.pewresearch.org/short-reads/2025/02/12/a-look-at-black-owned-businesses-in-the-us/

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[15] Perry et al., "Black Wealth Is Increasing, but So Is the Racial Wealth Gap," Brookings Inst. (2024), https://www.brookings.edu/articles/black-wealth-is-increasing-but-so-is-the-racial-wealth-gap/ (analyzing persistent disparities in median wealth between Black and white households despite recent gains).

[16] Aladangady et al., "Greater Wealth, Greater Uncertainty: Changes in Racial Inequality in the Survey of Consumer Finances," FEDS Notes (Oct. 18, 2023), https://doi.org/10.17016/2380-7172.3405.

[17] Note 15, *supra.*

[18] Note 5, *supra.*

[19] Bhutta et al., "Disparities in Wealth by Race and Ethnicity in the 2019 Survey of Consumer Finances," FEDS Notes (Sept. 28, 2020), https://doi.org/10.17016/2380-7172.2797.

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[31] *Id.*; Note 6, *supra.*

[32] Note 27, *supra,* (reporting that 18% of Black respondents without a will cited insufficient assets as a reason).

[33] *Id.*

[34] *Id.*

[35] Note 6, *supra.*

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[37] Note 25, *supra*, (finding that U.S. Black adults who use or had used a financial planner had significantly higher odds of executing a valid will or trust than those who did not).

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[39] See Dukeminier et al., Wills, Trusts, and Estates, 589–640 (11th ed. 2022) (discussing discretionary, support, and long-term trusts); Restatement Third, Trusts §§ 50–60 (addressing discretionary distribution standards); Sitkoff & Schanzenbach, "Jurisdictional Competition for Trust Funds," 115 Yale L.J. 356 (2005) (analyzing the rise of long-term and dynasty trusts).