MEMBERS, TAP HERE FOR AN ONLINE MOBILE-FRIENDLY ARTICLE

Serving Clients with Cognitive Decline

To prevent financial exploitation, it's imperative that financial planners help clients establish a proper support network before they start to struggle

By Mardell D. Presler, J.D.

Mardell D. Presler, J.D., prides herself as an attorney who works to avoid probate. Either with a will or trust, it's all about estate planning that's beyond traditional estate planning docs. When Mardell isn't in the office, you'll catch her with a backpack exploring the world. Or you'll find her biking the trails of Golden Valley or Lake Minnetonka.

What appears to be a client's oopsie could actually be the beginning of cognitive decline. My dad drilled holes on the bottom of outdoor waste bins so that rain would drain out. It was genius! However, when Dad drilled a hole in the bottom of his boat so that water would drain out, that was a sign that he might be starting to experience cognitive decline. Thankfully, it doesn't happen overnight, and financial planners have time to take steps to protect their loved ones and clients when they still have moments of lucidity.

Action Steps

As financial planners, sometimes you are the first to notice a decline. There are steps that can be taken today to protect clients' autonomy, privacy, and welfare.

- Meet on different days or times to catch clients when they're having a lucid moment.
- Maintain annual reviews and specifically pay attention to their cognitive thinking.
- Include a clause in your retainer agreement that authorizes you to reach out to other advisers and caregivers, and collect names and contact info of each adviser and caregiver.
- Update beneficiary designations, and then make the updates to confirm that it actually happens.
- Set up duplicate statements to be sent to your office to review if an unwanted withdrawal or beneficiary designation occurs.
- Obtain copies of estate planning documents for the client's vault.
- Freeze credit so that no one can open a credit card nor sign a lease using the client's Social Security number: www.usa.gov/credit-freeze.
- Reduce junk mail to minimize confusion and reduce scams sent by mail and email; the Postal Service's website (www.USPS.com) provides two websites that assist with this: www.dmachoice.org/register.php and www.optoutprescreen.com.
- Informed Delivery is a USPS service that emails scans of your mail to your inbox so that mail can't be hidden by an untrustworthy caregiver.
- Set up bills to be paid through the client's bank's eBill service, especially utilities and insurance policies; but set a limit not to pay a bill over an expected amount to mitigate against financial exploitation.
- Consider setting up a Social Security payee representative, either a trusted caregiver or a professional representative.

> **"As financial planners, sometimes you are the first to notice a decline."**

Guest User and Authorized Signer

Consider encouraging clients to list a guest user or an authorized signer on bank accounts. A guest user only has access to view an account, whereas signers are given authority to write checks on behalf of the client—this might still be effective after a death when POAs end.

Also, consider listing an authorized user (AU) on the client's mortgage so if there are any issues with the mortgage payments, a caregiver can contact the servicer for assistance. My mission is to avoid probate, so I asked a wise mortgage officer how we can keep the house out of probate for modest estates where a trust wouldn't be suitable. He recommended setting up an AU. The logistics of having a caregiver contact the bank in order to access the loan would require a court order, guardianship, or the bank's proprietary power of attorney, since most banks refuse to accept statutory POAs. However, most if not all servicers allow you to add an AU at any time. The AU won't be personally liable for the repayment of the debt; the only one(s) liable are the individuals on the loan (those who signed the note). If the AU is also the PR and the client has passed away, only then will they have a fiduciary duty. So, an AU would be someone who simply has access to loan information without going through probate, but they're not liable on that loan.

> "This is not the time to strong-arm the client into giving up their autonomy nor privacy. Instead, it is time to educate the caregivers on the assistance available to them."

Hold a Family Meet 'n Greet

The purpose is for the client to introduce you to the people the client relies on to be caregivers in an informal way so that the client is comfortable and feels safe. This is not the time to strong-arm the client into giving up their autonomy nor privacy. Instead, it is time to educate the caregivers on the assistance available to them. For one, clients may not realize that LTC and/or healthcare policies might provide caregiver training, such as learning how to lift people correctly to minimize injuries. These policies might also cover expenses to make home modifications that make the home safe for the client, allowing the client to continue to reside in their home. Furthermore, many long-term care facilities offer trial periods as a way to give clients the opportunity to change their minds and go back home. Finally, encourage caregivers to set up a schedule for someone to check up on the client on a daily basis.

Professional Fiduciary

Too often I hear clients say they don't have anyone to name in their estate planning documents. I've literally had clients tell me that their kids are knuckleheads. Anyone can serve as a client's guardian/conservator, personal representative, trustee, power of attorney, or healthcare directive. But if the clients' financial planner is serving in this role, that could create compliance issues. A solution is to name a different planner or reach out to a professional fiduciary. These are attorneys who are compensated either by private pay or a non-profit, such as Lutheran Social Services (which has offices across the nation). However, regardless of the need, the professional fiduciary would meet with the client to gather financial statements, real estate deeds or vehicles titles, estate planning documents, medical documents such as a DNR or physician order for life-sustaining treatment (POLST), a list of caregivers and their contact information, and passcodes to digital assets and online accounts.

Financial Exploitation

As an attorney who litigates contested cases, when I hear "cognitive decline," I automatically think financial exploitation. The vast majority of scammers are a client's child who is their caregiver. There are tons of examples of case law that address undue influence, where my definition of the law is "people doing shenanigans, and the court trying to clean up the mess." So, I consciously gauge family dynamics. I don't simply ask, "Who do you trust?" Instead, I ask the innocuous question when a client is talking about their children: "How often do they get together?" I'm really asking how the kids get along with each other, paying attention to the ones who might not be responsible nor trustworthy. I've gotten responses such as "they hate each other!" Later on in the consultation, when they aren't on guard of what I'm asking, I also ask, "which child gives you gray hair?" I'm really asking which one is having issues: financial struggles, substance abuse, spendthrifts, compulsive behaviors, etc. These two inquiries indicate to me who should not be nominated as the client's power of attorney, healthcare directive, personal representative, or trustee.

When financial exploitation is suspected, there are more drastic steps to consider. Clients can demand an accounting of their assets; for example, in Minnesota, MN § 523.21 states that the principal at any time can request the attorney-in-fact to render an accounting of those transactions. Anyone can file a complaint with the Consumer Financial Protection Bureau (CFPB) at www.consumerfinance.gov/complaint. In extreme cases, anyone can file a report with Adult Protective Services (APS). However, once a report has been made to APS, a client's autonomy will be taken away due to strict guidelines states must follow, e.g., a court-appointed attorney might be entrusted to consider a guardianship/conservatorship. In regard to contacting CFPB or APS, I recommend you speak with your compliance officer to ensure you aren't violating any laws or regulations. In one case I litigated, an insurance agent had the client's child listed as a contact. After the agent reached out to the child about missed payments, it was the child who discovered financial exploitation by the caregiver, and it was the child who reported the caregiver to the police, APS, and CFPB. This underscores the value of having the client's authorization to speak with all of the caregivers, not just the one overseeing the financial affairs.

Guardianship and Conservatorship

If the cognitive decline is too severe, a guardianship and/or conservatorship might be necessary for a client's welfare. Simply put, guardians have the authority to make decisions about the personal care of an individual while conservators have the authority to handle a person's financial affairs. Both carry the weight of court orders, whereas POAs and healthcare directives (HCD) can at times be rejected. To initiate a guardian and/or conservator hearing, a caregiver would have to file a petition with probate court, along with a physician's statement, and serve notice of the hearing to all interested persons. It's really that simple.

There are tons of shenanigans when probate gets involved since courts do not scrutinize who's petitioning for guardianship/conservatorship. Too often I see cases where a guardian or conservator was appointed after a 10-minute hearing, even though not all interested parties were in attendance. Maybe you're familiar with Britney Spears, who fought for 14 years to end a conservatorship from her dad, who by many accounts came across as money hungry. I can't speak on that, but my experience is that guardianships and conservatorships *do* open the door to financial exploitation. The hard part comes when the petition is contested, which in my experience is because the scammer wants to maintain control over the assets.

One way the courts have given clients a chance to express their wishes is by giving their healthcare agents and attorneys-in-fact priority in being appointed as a guardian/conservator. For example, Minnesota statute codifies priority for the healthcare directive agent to be appointed as a client's guardian (MN § 524.5-309(a)(2)) and conservator (MN § 524.5-413(a)(1)), while MN § 524.5-413(a)(2) gives priority to the attorney-in-fact to be appointed as a client's conservator.

Therefore, to combat financial exploitation, it is best to execute a healthcare directive and power of attorney by listing someone who truly is trustworthy. But you must ask those questions to gauge family dynamics. Also, considering many financial institutions reject statutory POAs, I highly recommend having clients complete proprietary POAs for each institution, submit them for acceptance, and renew them with a date that's no older than five years (which could be as short as one year depending on the institution).

Collaborate with an Attorney

Collaborate with an estate planning and/or elder law attorney who is not focused solely on documents and clients' wishes but who instead provides guidance to put clients' affairs in order in a way that won't be a burden on their loved ones. My clients embrace the opportunity to go above and beyond "assets and liabilities" and also compile contacts and action steps to take if incapacitated or after death in what I call my estate organizer. I don't see attorneys doing this, but there are companies that offer this service. These companies and myself were prompted to do this after experiencing a close one's passing who didn't have their affairs thoroughly in order and only had the traditional estate planning documents.

When you hear "elder law," think medical assistance programs (which are called different things in different states) and Medicaid. In the past, some couples were encouraged to divorce to protect their assets from being counted in assessing benefits, but that's no longer the case. Depending on income and assets, consider having a client meet with an elder law attorney to apply for government benefits that cover healthcare costs.

Also, an elder law attorney can help the client remain in their home by drafting a personal care agreement. In essence, these are contracts between the client and a caregiver to do tasks that the client is no longer able to do, such as housecleaning, yard work, etc. Minnesota's Department of Human Services' manual provides guidelines so the agreement could be honored during the benefit period. If the client isn't receiving government benefits, these agreements can provide equity among the children and hopefully mitigate family strife if one child is doing the majority of caregiving.

These action steps are here for you to help your client protect their autonomy, privacy, and welfare as well as potentially mitigate the risk of being financially exploited. You know your client best, so consider which steps are appropriate. This isn't an exhaustive list, so I would love to hear from you about any step(s) you take that I overlooked (www.linkedin.com/in/mardellpresler). Together we can help our clients to be in a better place than we found them! ■

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Adapt or Die: Serving the Next Generation of Clients

Planners need to start now to build relationships with clients' children that can be sustained even beyond the parents' lives

By Jessica Colston, PCC

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WHO IS GOING TO HAVE your clients' assets in 20 years?

Cerulli (2022) says that $84 trillion in assets will transfer by the year 2045 among high-net-worth and ultra-high-net-worth individuals. Cerulli further clarifies that $72.6 trillion of that will be transferred to next-generation heirs (Gen X, Gen Y, and Gen Z) while the rest will be donated to charities.

Furthermore, RIA Intel, reporting data from Cerulli, notes that, generally, Gen X stands to inherit nearly $30 trillion, Gen Y (or millennials) stands to inherit nearly $28 trillion, and Gen Z stands to inherit around $11 trillion (Deaton 2022). Also by 2045, Fidelity (n.d.) estimates that 57 percent of assets will be transferred from financial planners' clients to their heirs. Yet planners have only reached out to an estimated 13 percent of their clients' children.

That's a ton of money in movement in the next 20 years. Your current offering may not appeal to the next generation that values diversity, sustainable investing, and behavioral coaching. If you want to continue to be in business in the next 20 years, you need to adapt to appeal to these generations.

Cerulli (2021) reports that more than 70 percent of next-generation clients will change financial advisers after the great wealth transfer takes place. So we offer you some ideas on how to adjust so you can keep this business.

Establish a Baseline for Your Business

The first step in building your firm to effectively target next-generation clients is to take a moment and assess where you are. The first stop on this journey is to look at your values and goals. Borghesan (2023) reports for *InvestmentNews* that you should do this to see if your values align with those of next-generation clients (more on that in the next section).

Second, identify whether you have next-generation stakeholders. *ThinkAdvisor* reports that younger, more culturally diverse clients want planners and advisers who come from similar backgrounds (Comfort 2022). And Edelman Financial Engines (2022) finds that 82 percent of potential clients want people from a similar background advising them on their wealth.

Third, determine whether you've done enough to establish trust with next-generation clients through educational content.

Who Is the Next Generation and What Do They Want?

Beresford Research (n.d.) notes that Generation X are those born between the years 1965 and 1980. Pew Research Center notes that millennials are those born between 1981 and 1996, and Gen Y are those born between 1997 and 2012 (Dimock 2023).

When it comes to Gen X, Advisorpedia says that they tend to be more fiscally conservative and are bigger savers than spenders. Retirement is among their top financial goals, and they prioritize financial stability and security (Raynor 2023). The industry tends to ignore this generation, but they need help with milestones like paying for college for their kids, saving for retirement, and taking care of aging parents and children. The older Gen Xers are rapidly approaching the decumulation phase of retirement, but many of them are still in the accumulation phase. In addition, they still have debt in the form of student loans and mortgages.

Advisorpedia reports that Gen X prefers lower-risk investments and, while they are not digital natives like the younger millennials or Gen Zers, they are tech savvy and like to use digital solutions (Raynor 2023).

Fidelity (2023) notes that Gen X is the least confident about their financial futures among all of the generations and need guidance to increase that confidence. Advisers need to get in now as there's an increasingly narrow window to offer impactful advice.

What Gen X is looking for in their adviser: Fidelity (2023) reports that Gen X wants you to be tech savvy, to help them build their confidence, and to offer services that help them streamline their investing, bill pay, and savings. Plus, they want you to start engaging with their children.

Some millennials are still recovering from the financial setbacks of the Great Recession and are starting to focus more on priorities like buying a home, starting a family, and establishing education savings vehicles for their children, reports CFP Board (2022). Additionally, only 58 percent of millennials are saving for retirement. Fidelity (2024) found that 71 percent of millennials want to consolidate their assets and want to do all their financial business with one company.

Gen Z is diverse, tech-savvy, digitally native, and focused on education and debt repayment. CFP Board (2022) reports that 70 percent of Gen Z workers are saving for retirement, and their spending power is projected to surpass millennials' income by 2031. Additionally, they are the most diverse and are projected to be the most educated generation yet, and it's important to them to see themselves reflected in the professionals they work with.

Fidelity found that Gen Y and Gen Z both want behavioral coaching to help them avoid mistakes and bad decisions. Both value a personalized approach to their financial advice, value their communities, want different types of meetings other than just in person, and want to see you active on social media. Contrary to popular belief, both Gen Y and Gen Z value and are receptive to financial advice, but all three generations share that they don't seek financial advice because they don't think they have enough assets to manage. *Forbes* notes that these two generations value sustainable investing vehicles and want to make an impact with their money (Botha 2023).

Strategies to Target the Next Generation

There are several ways to capture and work with next-generation clients—from starting a new firm to attract this target demographic or targeting the children of your current clients. For the purposes of this article, we're focusing solely on how you can capture the wealth transfer from your ideal clients' heirs.

Start with identifying your ideal client, which you already have done in your client segmentation. Then you can find the best strategies to build trust with their kids. Here are some suggestions:

Do the Legacy Letter Challenge. Blake Brewer, founder of Legacy Letter Challenge, went on a mission to help a million parents write a "Legacy Letter" to their children after losing his dad on a family vacation in Hawaii. After his dad's death, his mom gave him a letter his dad had written him. Reading the letter made Brewer feel loved and like his dad was still there for him. Many financial advisers and planners have had their clients do this Legacy Letter Challenge to better connect with their children.[1] This challenge is a great way to connect the older generation with the newer generation, create a platform for peace to be made if it needs to be made, and help your clients share their hopes and desires for their kids with them.

Hold a family summit. Mark Kenney, CFP®, CTS, writes in Kiplinger, "The truth about generational wealth transfer planning is that it's just as much of a family matter as it is a financial one" (Kenney 2023).

As such, you can host a family summit. This isn't something you do with all your clients, and it goes beyond a typical adviser role and positions you as the trusted professional for your clients' heirs. In hosting a family summit, you adopt a consultative approach to help your clients pass on their values, purpose, and wealth to the future generations. With a family summit, you effectively take the Legacy Letter Challenge to the next level. Plus, successfully hosting a family summit can add value to your clients' kids and put you top of mind for them when they need to hire their own adviser (or switch from their current one).

"Appealing to these younger clients isn't something you should put off. The sooner you plant the seed, the sooner you will be able to bear fruit."

Provide educational content—especially for your clients' beneficiaries. Providing educational content on your social platforms and then directly to your clients' beneficiaries can help you connect. Develop and package educational content into snackable pieces of information. Steer clear of longer blogs and articles and stick to social graphics that you can share on your social platforms and email to beneficiaries. Being active and sharing valuable information on social is especially important when it comes to connecting with Gen Y and Gen Z.

Specialize in an area that's important to next-generation clients. Getting a specific designation to help with issues important to next-gen clients can give you an in. The Education Data Initiative reports that Gen X has an average of $44,000 in student loan debt, millennials have an average of $33,000, and Gen Z has an average of $14,000 (Hanson 2023). All generations need guidance on student loans. FINRA offers the Certified Student Loan Professional designation for professionals with at least two years of experience in financial services.

Establish a next-generation focus group or advisory council. The best way to find out what next-generation clients want is to ask them. You can put together an advisory council of current next-gen clients (if you have them) or kids of your current clients that meets regularly to provide insight into what they need and want. If the prospect of having regular meetings is intimidating, you can start with a one-time focus group. Either way, ensure you ask questions like:

- What is important to you when it comes to managing your finances?
- What kind of services are you looking for from a financial adviser?

Onboard associate advisers in your target markets. Gen Y and Gen Z are the most diverse generations ever. We're going from the boomers, 18 percent of whom identified as non-White, to these two generations who collectively identify as more than 50 percent non-White (Cerulli 2021). They want to see themselves represented, and they want to work with people like themselves. That is something your firms should be cognizant of and focus on through hiring next-generation talent that younger clients can relate to.

Like Nike, Just Do It

Appealing to these younger clients isn't something you should put off. The sooner you plant the seed, the sooner you will be able to bear fruit.

You'll want to start this process by looking at your current firm values and your current client segmentation, then creating a plan to execute keeping in mind what's important to the different generations. Perhaps you put an associate adviser in charge of implementing the plan to market to and serve these new clients. There's no time like the present to get started. ■

Endnote

1. Learn more about the Legacy Letter Challenge at www.legacyletterchallenge.com.

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