UNLOCKING OPPORTUNITIES IN THE FACE OF THE GREAT WEALTH TRANSFER

Use Legal Changes and Trends Plus Artificial Intelligence to Re-Imagine Your Estate Planning Practice

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Introduction

Estate planning is undergoing a transformation that extends beyond changes in the federal estate tax exemption or the arrival of generative artificial intelligence. Several powerful forces are converging at once: an unprecedented transfer of wealth between generations, significant changes in tax and estate-planning law, increasingly complex family and asset structures, rapidly developing artificial intelligence, and changing client expectations about professional services.

For estate-planning lawyers, these developments present both a challenge and an extraordinary opportunity.

For decades, much of estate planning has been delivered through a transactional model. A client needs an estate plan. The lawyer conducts an intake, holds one or more meetings, prepares documents, obtains client approval, conducts a signing meeting, sends the client home with a binder, closes the file, and moves to the next client.

Technology has gradually made that process more efficient. Word processing replaced typewriters. Document assembly replaced some manual drafting. Electronic questionnaires replaced paper forms. Video meetings reduced travel. Electronic signatures simplified some transactions. Generative AI is accelerating research, drafting, summarization, analysis, communication, and workflow.

But there is a danger in viewing AI simply as the next tool for producing documents more efficiently.

The important question is not:

How can AI help estate-planning lawyers produce more estate plans? If the estate-planning lawyer simply uses AI to do the same things faster, the lawyer will just have more meetings and faster repetition of an already over-paced process that leaves clients unsatisfied and many lawyers burned out.

The better question is:

What can estate-planning lawyers now do that they never before thought was possible? How can they provide an enhanced experience for clients and have a more fulfilling life and career in the process?

The answer may fundamentally change the nature of an estate-planning practice.

The opportunity presented by AI is not to produce estate plans faster; it is to create the capacity to transform estate planning from a document transaction into an enduring professional relationship centered on stewardship of family, wealth, risk, and legacy.

What Does an Estate Planning Professional Actually Sell?

Before considering how technology should change the practice, it is worth revisiting what the practice sells. Does a client schedule with an estate planning professional because the client wants a document? Or is the client looking to ensure that the client and spouse are provided for and protected during life, and that beneficiaries will be provided for and protected after the death of the client and spouse? Does a business owner want an operating agreement, or an understanding of how to safely build a company and protect what is built?

The honest answer is that nobody wants the document. The document is the delivery mechanism for something else: security, continuity, and the confidence that a family's intentions will be carried

out. A practice built around the delivery mechanism will always be vulnerable to a cheaper delivery mechanism. A practice built around the outcome is not.

An Example: From Paper Maps to Intelligent Navigation

Consider the evolution of navigation.

There was a time when a driver purchased a paper map. The map was the product. The driver determined where she was, selected the route, watched for turns, recognized when she was lost, and figured out how to get back on course. It was possible to order a trip-tik from companies like the American Automobile Association to assist with the planning.

In 1996, MapQuest arrived on the scene. MapQuest represented an important technological advance. It provided an online mapping and web navigation service that provides driving directions, live traffic updates, and route planning. Directions became digital, customized, and easier to obtain. Prior to the smartphone era, users looked up directions on a computer and printed them out on paper. Fundamentally, MapQuest digitized the paper map product. MapQuest continues to exist and is popular for planning complex, multi-stop driving trips.

Modern navigation systems changed the experience itself. Google Maps, Apple Maps, and Waze are free web mapping platforms that provide satellite imagery, street maps and real-time navigation. These services do not merely provide directions at the beginning of the trip. They know where the traveler is, monitor traffic, identify hazards, estimate arrival time, locate gas stations and restaurants, detect missed turns, recommend alternatives, and continuously reroute as circumstances change.

The evolution from the paper map to modern navigation systems was that of providing a **product** to providing an **ongoing experience**.

Estate-planning lawyers are currently faced with a choice. They can continue to provide paper maps – assembly line practices focused on document delivery – or they can become the equivalent of Google Maps and provide an “estate planning experience.”

AI can be used to simply do things faster or AI can help lawyers fundamentally redesign the estate-planning experience. The distinction is between the **AI-efficient law firm** and the **AI-enhanced legal experience**.

Choosing the latter positions the estate-planning lawyer to have a practice structure to do what he or she wanted to do when graduating from law school. Instead of spending the day trying to get commas in the right place, the estate-planning lawyer can focus on creating opportunities to utilize the estate-planning lawyer's best skills to serve clients strategically in the face of the ever-changing legal climate and the Great Wealth Transfer.

A Second Example: The Banking Industry

The same evolution has already played out in banking. Thirty years ago, banking meant going to a bank, standing in line, and engaging in a transaction with a teller or meeting with a banker. Today, the customer has an ongoing financial environment: accounts, alerts, automatic payments, fraud detection, credit monitoring, investment information, mobile deposits, and personalized recommendations.

Imagine if banks had responded to technology by announcing: “Great news. Tellers can now process deposit slips ten times faster.” That is precisely where many law firms are with AI. The technology is being used to speed up the teller line rather than to build the financial environment.

For estate planning professionals, it is imperative to view AI as creating the opportunity to design the practice they never thought possible. Lawyers in particular should shift from a transactional practice to a relational practice. The lawyer moves up in the value chain. Time can be spent on strategy instead of looking for two commas. The danger is to think of AI as simply a way to produce a trust agreement more quickly.

The Barriers That Are Coming Down

For centuries, lawyers were limited by what one person could read, remember, reach, and understand. AI removes those limits. It connects the dots across time, place, language, and disciplines in seconds. Specifically, the following barriers are coming down:

- **Time.** Reviewing every document in a client file was once impractical. It is now routine.
- **Distance.** AI can pull together the information held by each of the client's estate planning professionals into a better overall file.
- **Language.** AI can read Portuguese, and it can make the complex simple for the client.
- **Memory.** No one can remember the details of 500 files. A well-designed system can.
- **Silos.** Multiple legal areas affect estate planning – tax, trust, corporate, marital, creditor, elder, and property law – and AI can work across them.
- **Generational planning.** AI helps the lawyer cut across generations, holding the senior generation's plan and the beneficiaries' circumstances in a single view.

AI creates capacity. Whether that capacity produces better client outcomes and a better professional life depends on how we redesign the work, price the service, and allocate the capacity. The question is whether we are going to build a faster taxi or redesign the legal experience.

To set the stage for the reason to consider transforming the practice of the typical estate-planning lawyer, I am going to lead with a description of the “Transactional Practice Syndrome.” The paper will then explore the Great Wealth Transfer, legal changes and trends, and uses of Artificial Intelligence in estate planning practice. Throughout, a single family – the Harlans – will illustrate how the law and the practice model apply to real facts. After exploring these topics, this paper will seek to bring together these topics and propose a Re-imagined Estate Planning Practice that creates a better experience for clients and job satisfaction for estate-planning lawyers.

The Transactional Practice Syndrome

AI can be thought of as “creating more documents faster.” To understand why the faster-document response is so tempting, it helps to name the model many estate-planning lawyers are actually operating.

Let's call it the Transactional Practice Syndrome: a practice in which the lawyer's economic engine depends on continually acquiring, meeting with, drafting for, and completing matters for an ever-growing number of clients. The lawyer sells transactions — primarily documents — rather than an ongoing advisory relationship.

The cycle is familiar enough that most readers will recognize their own calendar in it.

You take nearly every client who calls and asks for an estate plan. Every new client means another full sequence of intake, meetings, drafting, revisions, signing, and follow-up. Flat fees get set at what the local market will tolerate (or lower) rather than what the professional time actually requires. And we chronically underestimate the invisible time surrounding the document — the

emails, the phone calls, the preparation, the funding questions, the beneficiary designation problem discovered in month seven, the coordination with three other advisors.

The practice is perpetually behind, because the calendar has become the production system.

The consequences compound. Client meetings consume the lawyer's most valuable resource, which is professional attention. Existing clients start to feel like interruptions, because there is no economic model for continuing to serve them. Follow-up happens when something goes wrong rather than because the practice anticipated it. There is little protected time to read, think, learn, or write, so intellectual capital grows slowly precisely because the lawyer is always producing. Revenue depends on originating the next matter. Success gets measured in documents completed, matters closed, and hours worked.

The human result is a lawyer who is simultaneously too busy, underpaid, and professionally unfulfilled. Eighteen hundred to twenty-four hundred billable hours – often 2,500 or more hours actually worked – and no time for the aspects of the work that made the profession worth entering. Learning happens on weekends, if at all. Relationships happen when something goes wrong. Time off is a liability to the production system.

Here is why this matters: artificial intelligence, used incorrectly, accelerates the syndrome rather than curing it.

Now I can prepare twice as many estate plans.

If AI is about increasing speed, you will have missed the transformation entirely and simply increased the speed of the treadmill.

A Meeting in 2030

Consider a meeting that will take place in many conference rooms a few years from now. A successor trustee who never met the drafting attorney sits down with the grantor's children, now in their fifties, and opens a file created twenty years earlier. The questions come quickly:

- Why did Mom choose this distribution standard?
- Why was this child given control?
- Why was it decided that the business would be handled this way?
- Why did nobody explain this to us while Dad was alive?

The transactional practice has no answer, because the file contains documents and not reasoning. The relational practice does. The balance of this article is about building the practice that can answer those questions.

Meet the Harlan Family

To keep the discussion concrete, this article follows one family through the law as it stands in 2026 and through the practice model proposed at the end. The Harlans are a composite, but every issue in their file is one that arrives in estate planning offices regularly.

- Dan (72) and Ellen (69), married 44 years, living in Omaha. Net worth about $42 million.
- A 2012 estate plan with a credit-shelter formula clause, drafted when the federal exemption was $5.12 million. Ellen was “the spouse” in that plan and was not actively involved in creating it.

- Harlan Precision, a closely held S corporation manufacturer worth about $18 million. Son Michael (45) runs it. There is no succession plan; the parents' stated goal is “everything equal.”
- Daughter Kate (47), a physician in Massachusetts, married, with professional liability exposure. She has never seen her parents' plan and has never met the firm.
- Dan's IRA of $3 million, payable to his 2012 revocable trust with a conduit provision.
- Ellen's mother Ruth (91) is the income beneficiary of a $10 million QTIP trust. Ellen and her brother are the remainder beneficiaries, and they want to “simplify” Ruth's trust by terminating it.
- Nebraska imposes a county inheritance tax that reaches lineal heirs. Portability was never discussed.

This article will encourage you to use the Great Wealth Transfer, legal changes and trends, and AI in a way that will create the practice and life you never imagined possible.

The Great Wealth Transfer

The Great Wealth Transfer Is Already Underway

For years, commentators have discussed the coming Great Wealth Transfer. At this point, the Great Wealth Transfer is already underway.

The magnitude of the Great Wealth Transfer is difficult to overstate. Although different organizations identify varying amounts that are expected to transfer, the transfer of wealth is significant regardless of which estimate is ultimately accurate.

Cerulli Associates currently projects approximately $124 trillion of wealth will transfer through 2048, with approximately $105 trillion passing to heirs and approximately $18 trillion passing to charities.[1] Nearly $100 trillion is expected to transfer from Baby Boomers and older generations. More than half of the total transfer—approximately $62 trillion—is projected to originate with high-net-worth and ultra-high-net-worth households, even though those households represent only approximately two percent of all households.

Visa provides a different and considerably smaller number. Visa's 2026 analysis estimates that approximately $36 trillion of Baby Boomer wealth will actually reach Gen X and Millennial households on a net basis.[2]

The two numbers are not contradictory; they answer two different questions. Cerulli measures gross flow. Visa measures what reaches heirs after liabilities, retirement spending, taxes, fees, and charitable gifts. Anyone who cites $124 trillion without saying what it measures is selling a headline; anyone who acknowledges the range is describing a market. The exact number matters less than the conclusion: an enormous amount of wealth is moving, and the professional relationships surrounding that wealth are moving with it.

For estate-planning lawyers, the size of the transfer is only part of the story.

[1]Cerulli Associates, Cerulli Anticipates $124 Trillion in Wealth Will Transfer Through 2048, https://www.cerulli.com/press-releases/cerulli-anticipates-124-trillion-in-wealth-will-transfer-through-2048.

[2]Visa Consulting & Analytics, The Great Wealth Transfer: A Reality Check (2026), https://usa.visa.com/partner-with-us/visa-consulting-analytics/economic-insights/great-wealth-transfer-reality-check.html.

Wealth Will Often Transfer Twice, and Sideways First

Much of the discussion of the Great Wealth Transfer creates a picture of elderly parents dying and leaving substantial fortunes directly to Millennials. The actual transfer is likely to look quite different from that. For the estate-planning lawyer, considering the steps involved in the transfer of wealth is helpful in creating opportunities to be of service. The sequence typically looks like this:

- **Incapacity.** This is where interference with testamentary intent most often begins.
- **First death.** Portability, state QTIP elections, and formula clauses all come into play.
- **The surviving spouse.** Frequently a spouse who was not actively involved in the planning and who may be meeting the lawyer for the first time as a client.
- **Second death.** This is the relationship test. Does the family call you, or someone else?
- **Heirs in their 50s and 60s.** They have advisors, assets, and plans of their own.

For many married couples, the first significant wealth transfer will be from one spouse to the surviving spouse. Although the surviving spouse may be either male or female, it is likely that significantly more wealth will be in the hands of women than has been the case historically.

For the estate-planning lawyer, incapacity and the first death present pivotal moments for consideration in estate planning. It is imperative to address the incapacity of one or both spouses during life as well as the structure of passage of wealth at the death of the first spouse. Incapacity is a significant issue and is one of the moments where interference with testamentary intent often occurs. Speaking with clients about these risks and the importance of self-protection, survivor protection, and avoidance of interference with testamentary intent is a significant opportunity.

The lawyer who prepared documents years earlier but has had no meaningful relationship with the surviving spouse may discover that another adviser has become the family's trusted counselor. The lawyer who has built a relational practice with a team that reflects the skill and demographics prepared to handle the transition of wealth will be in a different position.

> **Harlan file:** The first transfer will be from Dan to Ellen, or from Ellen to Dan. Ellen was not involved in the 2012 planning. The first meeting after a death should be a review of a plan structure the survivor already understands – not an introduction to it.

Who Are the Beneficiaries?

The inheriting beneficiary is an established adult closer to 50 than 30. Cerulli identifies Gen X as the generation inheriting the most over the next decade. Beneficiaries, especially by the time of a second transfer from a surviving spouse, may be in their 50s and 60s. Often, such beneficiaries have had careers, accumulated assets of their own, and have estate plans and professional advisors. She already has a financial advisor and a CPA, children in college, a substantial retirement account, and a second home. She does not need to be introduced to wealth. She needs someone who can explain what happens next.

The stereotypical “next-gen” marketing campaign aimed at thirty-year-olds misses the actual inheritor.

Because much of the wealth is transferring within the top 2% of wealth, inheritances will not be arriving on a blank financial canvas but will instead enter an existing financial and family system. Much of the wealth will be invested rather than spent.[3]

Because of the nature of the transfer, planning for the wealth transfer involves sophisticated planning issues including asset protection, estate tax planning, basis planning, income taxation, retirement assets, life insurance, complex beneficiary designation structures, complex trusts, business interests, charitable planning, state taxation, and marital property. Effective planning will coordinate the planning of the senior generation with that of the beneficiaries.

> **Harlan file:** Kate is 47, a physician, married, and lives in Massachusetts. She has never seen her parents' plan. Who is her lawyer? If the answer is “nobody at this firm,” the relationship risk discussed next is already present.

The Great Wealth Transfer Creates a Relationship Risk

A lawyer may have represented a family for thirty years without actually representing—or even knowing—the people who will eventually inherit the family's wealth. That is an increasingly significant weakness in the traditional estate-planning model. If the lawyer's relationship exists solely with the wealth creator, the relationship may end when the wealth creator dies. The children did not hire your firm. The successor trustee may never have met you.

Developing relationships with the family of the wealth creator should be a priority for the relational estate-planning lawyer. While some clients may not be open to family meetings, preparing the family for wealth transfers has become more common.

There are significant differences in expectations from service providers by Gen X and Millennials. Expectations include seamless, digital-first convenience, rapid response times, and complete transparency. An estate planning lawyer without mobile apps, online portals and digital paperwork is likely to be considered a dinosaur incapable of serving the inheritors of wealth.

Personalized experience is also an expectation. Service providers are expected to leverage technology and data to provide customized and tailored recommendations and services.

The Great Wealth Transfer may also be a Great Relationship Transfer. Trillions of dollars will change hands, but so will trillions of dollars' worth of professional relationships. The attorney who knows only the wealth creator is vulnerable. The attorney who knows the spouse, children, family dynamics, businesses, advisers, philanthropic objectives, and legacy goals is positioned to remain relevant across generations.

Three Forces Converging at Once

The Great Wealth Transfer does not arrive alone. It arrives at the same time as the most significant transfer-tax legislation in a generation and the most significant technological change in the history of the profession. Each force alone would reshape the practice. Together, they make the transactional model untenable and the relational model possible.

- **The Great Wealth Transfer** changes who makes decisions and what families need. The heir is an established adult with existing advisors.
- **Legal change and trends** require continuing judgment and coordination. A permanent $15 million exemption shifts the work to basis, state tax, retirement assets, asset protection, and legacy.
- **Artificial intelligence** changes the cost and speed of production. It is no longer emerging. It is expected by clients, implicated by Rule 1.1, and capable of absorbing the production work.

- **Practice redesign** determines whether those changes improve service and professional life – or simply speed up the treadmill.

Legal Changes and Trends Are Impacting the Estate-Planning Lawyer's Role

At the same time that wealth is moving between generations, the substantive law governing estate planning continues to evolve. One of the most significant federal estate-tax developments may cause some clients—and some lawyers—to believe that less estate planning is necessary but the opposite is actually true. The change in the federal transfer tax rules allows estate planning clients to engage in thoughtful, flexible, adaptable life planning, legacy planning, business succession planning, and asset protection planning in a manner that is driven by overall legacy objectives rather than just avoiding the estate tax.

The significance of the developments summarized in this section is not simply that estate-planning lawyers have more law to learn. They demonstrate why estate planning can no longer be treated as a static transaction. A technically excellent plan on the date it is signed may become less effective because the law changes, the client moves, assets change, family circumstances evolve, or new risks emerge. The increasing complexity of the law therefore strengthens the case for an ongoing advisory relationship and using AI in a way that creates the capacity for the estate-planning attorney to be ahead of the curve on changes and trends.

This article summarizes legal changes and trends; more detail on the changes is provided in Part 2.

Legal Changes

OBBBA at a Glance

The One Big Beautiful Bill Act (OBBBA)[4] was enacted on July 4, 2025. Several provisions impact estate-planning lawyers.

- **$15 million basic exclusion.** The basic exclusion amount for estate, gift, and GST purposes is $15 million per individual for 2026, indexed for inflation beginning in 2027. The applicable credit for 2026 is $5,945,800. The change allows clients the flexibility to design plans focused on dispositive goals rather than being restricted by estate tax provisions.
- **Permanent.** There is no scheduled sunset. The TCJA “cliff” that drove so much 2024 and 2025 planning never arrived.
- **$19,000 annual exclusion** for 2026.
- **Qualified small business stock (§ 1202).** OBBBA introduces a tiered holding period with graduated exclusions, a higher per-issuer cap, and a higher gross-asset threshold. More clients will be able to take advantage of the exclusion upon sale of such stock, and C corporation structures deserve fresh consideration in the planning mix.
- **Opportunity Zones** become a permanent, recurring program. New designations begin with a July 1, 2026 decennial determination date and recur every ten years. Annual reporting now carries per-day penalties.
- **SALT and international.** The state and local tax deduction cap rules changed. GILTI has been renamed net CFC tested income, with changes to the § 250 deduction and foreign

[4]One Big Beautiful Bill Act, Pub. L. No. 119-21 (July 4, 2025).

tax credit rules. Strategic planning is merited for clients with multistate or cross-border exposure.

The changes from OBBBA are significant and much discussed, but a true understanding of the changes is often missing from the conversation. The relational lawyer will consider these changes in specific relation to clients and discuss what matters to the client's planning. (Skip the generic newsletter.)

Not Less Planning: More Flexible Planning

For the 98% of families below the exemption, planning is now driven by legacy objectives rather than tax avoidance. The focus shifts to:

- Income-tax basis and step-up planning.
- State estate and inheritance taxes.
- Retirement assets and beneficiary designations.
- Asset protection and divorce protection.
- Business succession and family governance.
- Incapacity, which may matter more than death.

The old instinct to move appreciating property out of the estate early may now cost a basis adjustment the client needs more than the tax savings. Estate tax planning has not disappeared – it still applies to families like the Harlans – but for most clients it is no longer the organizing principle.

The remediation sweep. Plans drafted around previous exemptions, or in expectation of the sunset that never came, may no longer work. Formula clauses, credit-shelter funding provisions, and disclaimer provisions written for a $5 million or $11 million world can produce results nobody intended at $15 million. Find these files. Do not wait for the client to call.

> **Harlan file:** The 2012 formula clause was designed for a $5.12 million exemption. Evaluate how that formula operates today, illustrate the alternatives, and bring both spouses into the conversation.

Charitable Planning After OBBBA

OBBBA also changed the mechanics of the charitable deduction in ways that affect how and when clients give:

- **0.5% floor for individuals.** Itemizers deduct only contributions above 0.5% of the contribution base, applied in a specified ordering.
- **Deduction for non-itemizers.** A $1,000 (single) / $2,000 (joint) deduction is available for cash gifts to public charities only.
- **1% floor for corporations.** Corporations deduct only contributions above 1% of taxable income, still within the 10% ceiling.

Bunching several years of gifts into a donor-advised fund applies the floor once; the deduction arises on contribution to the fund, not on later grants. More broadly, philanthropists increasingly want goals achieved more than tax dollars saved, and combining structures flexibly has become the norm.

New § 68: Does the Haircut Reach Trusts and Estates?

OBBBA replaced the former overall limitation on itemized deductions with a new § 68 that reduces otherwise allowable itemized deductions by 2/37 (about 5.41%) of the lesser of total itemized

deductions or taxable income above the 37% bracket threshold – effectively capping the benefit of those deductions at roughly 35%. Significantly, OBBBA repealed the former § 68(e) exception for trusts and estates.

That repeal creates an open question. Section 67(e) treats costs unique to administration as deductions in arriving at adjusted gross income, not as itemized deductions, and also provides that the §§ 651 and 661 distribution deductions are taken into account in determining AGI. Whether new § 68 now reaches the § 642(c) charitable deduction and the distribution deduction of a complex trust is unresolved. This is a fiduciary income tax question hiding inside an estate planning statute. Watch for guidance, model both outcomes for complex trusts, and re-run non-grantor trust strategies that were built on prior assumptions.

Basis Consistency: One Problem, Not Three

As fewer estates are exposed to federal estate tax, income-tax basis becomes increasingly important. Final regulations issued September 17, 2024[5] connect the estate-tax value of inherited property to the recipient's income-tax basis. The analysis has three steps:

- Determine whether § 1014(f) applies. Where it does, the recipient's initial basis cannot exceed the final federal estate-tax value.
- Use the final estate-tax value as initial basis, then track post-death adjustments and keep records.
- Analyze § 6035 reporting separately. Section 6035 imposes broader information-reporting duties that cover included property even where the consistency cap does not apply.

Basis planning now requires coordination among lifetime gifting, trust design, powers of appointment, inclusion strategies, and charitable planning.

The SECURE Act and the 2024 Final Regulations

The SECURE Act of 2019[6] fundamentally changed post-death planning for retirement accounts by largely eliminating the traditional “stretch IRA.” For deaths after 2019, most designated beneficiaries who are not “eligible designated beneficiaries” (EDBs) must receive the entire inherited account by the end of the tenth year following the participant's death. EDBs—generally a surviving spouse, the participant's minor child, a disabled or chronically ill individual, or an individual not more than ten years younger than the participant—may qualify for life-expectancy distributions. A minor child loses EDB status upon reaching age 21, after which the 10-year period applies.

The 2024 final Treasury regulations[7], generally applicable beginning in 2025, resolved a major controversy concerning what happens *during* the 10-year period. If the participant dies before the required beginning date, a non-EDB designated beneficiary generally may take distributions at any time during the ten years, provided the account is completely distributed by the end of year ten. But if the participant dies on or after the required beginning date, the beneficiary generally must continue taking annual RMDs during years 1–9 and completely distribute the account by the end of year 10. The transition relief that applied for 2021 through 2024 has ended; the rules bite from 2025.

The planning consequences are substantial. See-through, conduit, and accumulation trust design determine both the payout and the tax rate. Compressed payouts to an accumulation trust are

[5]T.D. 9991, 89 Fed. Reg. 76356 (Sept. 17, 2024) (final regulations under §§ 1014(f) and 6035).

[6]Setting Every Community Up for Retirement Enhancement (SECURE) Act of 2019, Pub. L. No. 116-94.

[7]T.D. 10001, 89 Fed. Reg. 58886 (July 19, 2024).

taxed at trust rates. Roth conversions, qualified charitable distributions, charitable beneficiaries, and spousal options all deserve consideration. Retirement assets create a myriad of opportunities, but the complexity results in failed or missed strategies. For estate planners, the SECURE Act substantially increased the importance of retirement-benefit trust drafting and beneficiary-designation planning. Beneficiary designation planning is now a high-value service.

> **Harlan file:** Dan's $3 million IRA names his 2012 revocable trust, which contains a conduit provision. That provision forced every distribution out to the beneficiary – fine for a life-expectancy stretch, and a 10-year firehose today, with no creditor or divorce protection for Kate. The IRA needs its own analysis.

State Estate Tax Planning

With a $15 million federal exemption, state transfer taxes become proportionately more important. A client can now be comfortably below the federal exemption yet have significant exposure in a state with a much lower estate-tax exemption or an inheritance tax. Sixteen states and the District of Columbia impose either an estate tax or an inheritance tax.[8]

For many affluent clients, state transfer taxes may now be more relevant than federal estate tax. The following deserve considerably more attention even when the client is nowhere near the $15 million federal exemption:

- Domicile planning and the distinction between estate-tax and inheritance-tax nexus.
- Real property in another state: situs, entity ownership, and apportionment.
- State-only QTIP elections and state-specific bypass trusts.
- Lifetime gifting where the state has no gift tax.
- Portability differences between the federal and state regimes.

> **Harlan file:** Nebraska's county inheritance tax reaches lineal heirs, so Michael and Kate have exposure regardless of federal estate tax. Kate's Massachusetts domicile and the situs of Ruth's trust each deserve a separate look.

Portability

The higher permanent exemption does not make portability irrelevant. For married clients, filing a Form 706 to elect portability can preserve the deceased spousal unused exclusion (DSUE) even when no estate tax is currently expected. Given future appreciation, remarriage issues, legislative uncertainty, and unequal asset ownership, the election can provide valuable optionality.

Rev. Proc. 2022-32[9] provides a simplified method for a late portability election up to the fifth anniversary of death, with the required legend at the top of the return and no private letter ruling or user fee. Two limits apply. First, if the estate was independently required to file Form 706, the deadline is statutory and § 9100 relief is unavailable. Second, if the five-year window is missed on a nontaxable estate, a private letter ruling under Treas. Reg. § 301.9100-3 remains possible. Five years is not the end of the road for a nontaxable estate.

> **Harlan file:** If Dan dies first and nobody files a 706, Ellen's exposure increases by exactly the DSUE nobody preserved. Portability belongs in the written plan summary as a trigger event.

[8]Tax Foundation, Estate and Inheritance Taxes by State, https://taxfoundation.org/data/all/state/estate-inheritance-taxes/.

[9]Rev. Proc. 2022-32, 2022-30 I.R.B. 101.

The QTIP Trilogy: One Transaction, Three Questions

Post-OBBBA, families are actively unwinding trusts that were created for estate tax reasons that no longer seem to apply. Three Tax Court decisions arising from the same fact pattern – a QTIP trust is commuted, everything is distributed outright to the surviving spouse, and the remainder beneficiaries sign and walk away with nothing – together form the single most useful case cluster of the year for anyone revisiting old trusts. Each case answers a different question.

Does the spouse make a gift? No. In *Estate of Anenberg*,[10] approximately $25.45 million was held in QTIP trusts for Sally, with the remainder passing to trusts for Alvin's children. In 2012, with beneficiary consent and court approval, the trusts were terminated and all assets were distributed outright to Sally. Sally then gifted some stock and sold the rest to descendants' trusts for notes. The IRS argued the termination was a § 2519 disposition producing a taxable gift of the remainder. The Tax Court held that even assuming a § 2519 deemed transfer, § 2501 taxes only a transfer *by gift*, which requires a gratuitous transfer. Sally received the entire property outright for relinquishing her interests; she gave away nothing. Once she owned the property outright, § 2519 no longer applied to her later sales. The result would differ if the spouse received only the value of the income interest while the remainder passed to others.

Do the children make a gift? Yes. In *McDougall*,[11] Clotilde's 2011 death funded a QTIP trust for Bruce; their children Linda and Peter held the remainders. By 2016 the assets had more than doubled. A nonjudicial agreement terminated the trust and distributed everything outright to Bruce, who then sold substantially all of the assets to trusts for descendants for promissory notes. Following *Anenberg*, Bruce made no taxable gift. But Linda and Peter actually owned valuable remainder interests under state law, and by consenting they surrendered those interests for nothing. They made taxable gifts to Bruce under §§ 2501 and 2511. The court rejected the argument that the spouse's deemed transfer and the children's actual transfers were offsetting reciprocal gifts. The QTIP fiction treats the spouse as owner for transfer-tax purposes; it does not erase the remainder beneficiaries' real property rights.

How much is the gift? Eight figures. *Lewis v. Commissioner*,[12] the valuation sequel to *McDougall*, was filed July 20, 2026. The stipulated trust value at termination was $117,604,143, with no reserve for transfer taxes. Bruce held a testamentary power to appoint to descendants and had exercised it by will weeks before the termination. The children's expert valued the gifts at $156,000. The IRS valued them at roughly $53 million. The court held that each child made a taxable gift of $35,141,321. Three holdings matter for every practitioner:

- **Powers of appointment are ignored.** The value is determined without regard to a beneficiary's testamentary limited power of appointment. A theoretical power to redirect assets at death does not reduce current gift value.
- **State law, not the § 7520 tables.** State law governs each beneficiary's entitlement on termination; the actuarial tables were not appropriate on these facts.
- **Net-gift adjustment.** The gift is reduced by the children's avoided obligation to reimburse Bruce for gift tax under § 2207A(b).

The gap between $156,000 and $35 million per child is the cost of signing before valuing. *Lewis* is a memorandum opinion and an appeal is possible, but the reasoning follows directly from the two reported decisions before it.

[10]Estate of Anenberg v. Commissioner, 162 T.C. 199 (2024).

[11]McDougall v. Commissioner, 163 T.C. 112 (2024).

[12]Lewis v. Commissioner, T.C. Memo. 2026-58 (July 20, 2026) (memorandum opinion; watch for appeal).

What the trilogy means for every "simplify" request. Before any commutation, termination, decanting, or nonjudicial settlement agreement:

- Value what each consenting beneficiary gives up under governing state law.
- Do not count on a power of appointment to shrink the number.
- Address transfer-tax allocation and reserves in the agreement itself.
- Model the gift exposure of every signer, not just the spouse.
- Consider alternatives: partial commutation, sale of the remainder for adequate consideration, use of the spouse's own exemption, or leaving the trust alone.

This is judgment work, not document work.

> **Harlan file:** Ruth's $10 million QTIP, with Ellen and her brother as remainder beneficiaries, is exactly the *McDougall* fact pattern. "Simplify the QTIP now" could result in Ellen and her brother each making a substantial gift to Ruth, valued at Ruth's actual life expectancy under state law and not reduced by any power of appointment Ruth holds. The family's instinct is reasonable and would be costly. Lawyer judgment is used to clarify objectives, consider the alternatives, and document the rationale.

Kalikow: QTIP Liabilities and Value

A related Second Circuit decision[13] addressed what happens when a QTIP trust carries a liability at the surviving spouse's death. The QTIP trust held a 98.5% limited partnership interest stipulated at about $54.5 million. Litigation alleged that trust income had not been properly distributed to Pearl during her life; the claim settled for about $6.57 million payable to her estate by the QTIP and the children's trusts. The estate argued the liability reduced the § 2044 value or was deductible under § 2053. Both arguments failed. The obligation belonged to the trusts, not to the partnership being valued, and from the estate's point of view the settlement was an asset, not an administration expense. The summary order is without precedential effect, but the reasoning travels. Practice pointers: distribute QTIP income properly and on time, identify precisely which entity bears a liability, and be careful what you stipulate.

Intersection of Marital Law and Estate Planning

Massachusetts has developed a line of divorce cases concerning whether a beneficiary's interest in a third-party trust constitutes "property" included in the marital estate under Mass. Gen. Laws ch. 208, § 34. The trend is not that every trust interest is marital property, but the most recent cases have demonstrated that even irrevocable, discretionary, spendthrift trusts created by third parties can be included if the beneficiary's interest is sufficiently "fixed and enforceable."

In *Jones v. Jones*,[14] a mother's irrevocable trust for the wife had an independent trustee, discretionary distributions, a spendthrift clause, and a power to postpone distributions on divorce. The wife never received an outright distribution. The court nonetheless held the interest to be marital property: she was the sole beneficiary, her share could not be reduced, the corpus was ultimately hers, and she held a testamentary general power of appointment. A spendthrift clause and an independent trustee are no longer enough.

New York has gone a step further. In *C.S. v. R.H.*,[15] marital assets were moved into irrevocable descendants' trusts through IDGTs, GRATs, discounted entities, and below-market residence

[13]Estate of Kalikow v. Commissioner (2d Cir. 2025) (summary order without precedential effect).

[14]Jones v. Jones, 103 Mass. App. Ct. 223 (2023); see also Mass. Gen. Laws ch. 208, § 34.

[15]C.S. v. R.H., 2025 NY Slip Op 51426(U) (on appeal).

rentals. The husband controlled trustee removal and investments, paid family expenses from the trusts, and decanted to Delaware in the middle of the trial. The court found the trusts valid and not shams – and still counted their value and awarded the wife 50%, payable first from non-trust assets. The decision is on appeal. The planner was identified by name, and the wife had no independent counsel.

Although much of this law developed in Massachusetts and New York, the planning implications extend beyond those states. The inquiry has shifted away from labels and in the direction of the actual bundle of rights possessed by a beneficiary, and toward who really controls the trust. For trusts intended to provide divorce protection for descendants, these cases favor structures involving:

- Genuinely discretionary distributions.
- Multiple or open beneficiary classes.
- No mandatory distribution at a specified age or event.
- Limited beneficiary powers of appointment.
- Meaningful independent trustee discretion.
- Independent counsel for each spouse and real separation of control.

> **Harlan file:** Kate lives in Massachusetts. Any trust her parents fund for her should be designed with the intersection of marital and trust law in mind from the first draft, not retrofitted later.

Legal Trends

Estate Planning as an Ongoing Process

- Estate planning is becoming an ongoing process rather than a transaction. Large intergenerational transfers require ongoing attention to asset ownership, beneficiary designations, tax law, family relationships, trust administration, business succession and beneficiary preparedness.
- Although the concept of estate planning as an ongoing process sometimes arises in the context of the high net worth client, the fact is that incapacity planning, disposition planning, retirement planning, and asset protection matter just as much to clients with modest wealth.
- Incapacity planning is at least as important as death planning.

Focus of Planning Has Changed

- Planning is increasingly focused on creditor protection, divorce protection, management of inherited wealth, protection from poor financial decisions, preservation of family businesses, and multigenerational stewardship. For many families, the question is no longer simply *"How do we minimize estate tax?"* but *"How do we make sure this wealth actually benefits the next several generations or serves our philanthropic goals?"*
- This trend has resulted in more use of long-term trusts, directed trusts, and use of institutional trustees.

Lifetime Gifts Have Become More Common

- Senior family members who have sufficient wealth increasingly want to see children and grandchildren benefit from wealth during the senior generation's lifetime. Strategies used include trusts, family investment entities, gifts for housing or entrepreneurship, education funding and philanthropic participation.

- Lifetime transfers also allow the wealth creator to mentor beneficiaries and observe how they handle money. Observing how a beneficiary handles money while the wealth creator is still alive provides guidance as to the level of guardrails that may make sense upon the death of the wealth creator.

Family Governance Is Part of Planning

- Estate-planning lawyers have often spent enormous effort designing sophisticated trusts while spending very little time preparing the people who will inherit them. Sometimes, the settlors themselves don't understand the trusts. Family meetings, including education, have become important.
- Beneficiary preparation has become part of the planning process. Consider suggesting an annual family meeting that focuses on a different topic (or a few) each year including investing, estate planning, the economy, philanthropy, and other topics important to the family.

Attention to Divorce and Relationship Risk

- As very substantial inheritances move to Gen X and Millennials, families are increasingly concerned that inherited wealth remain within the bloodline. Such concern is often a significant factor in trust design including the structure of distributions, the use of independent trustees, powers of appointment, premarital agreements and careful trust administration. The *Jones* and *C.S.* decisions discussed above make this a design requirement rather than a preference.

Asset Protection Planning

- Asset protection is about arranging access, ownership, control and management of assets in a manner that reduces exposure of assets to the risk of claims of creditors.
- Asset protection planning has long been an inherent part of estate planning; however, 2025 and 2026 have reflected significant growth in asset protection planning. Asset protection now belongs in every plan, not in a separate practice.
- Current asset protection trends include jurisdictional diversification, both domestic and international.
- Asset protection isn't about a domestic or foreign asset protection trust but is about every aspect of the client's planning, from basic liability insurance considering client-specific risks, to the use of limited liability companies, to very specific trust design strategies.

Income Tax Planning Has Become More Important than Estate Tax Planning

- There are multiple strategies that have evolved to facilitate income tax planning. Creating an irrevocable non-grantor trust in a state with no income tax can be beneficial in the right circumstances. Planners should consider the possibility that clients and/or beneficiaries will move and design flexibility to take advantage of potentially improved tax climates. Basis strategies are a significant aspect of planning.
- The new § 68 question discussed above means non-grantor trust strategies should be re-modeled rather than assumed.

Charitable Strategies Have Evolved

- Historically, there was a short list of charitable strategies that included direct giving, charitable remainder trusts, charitable lead trusts, donor-advised funds, private foundations and similar strategies. The focus was often tax savings.

- Currently, many philanthropists are interested in achieving specific goals more than saving tax dollars. Flexibility using a combination of structures has become common, and the OBBBA floors make timing and bunching part of the design.

Business Succession Planning Has Become Urgent

- A significant portion of transferred wealth consists of privately held businesses. Many founders have tax plans but no real succession plan. Business succession planning is an integral part of estate planning – and it is a legacy plan, not a tax plan.

Unique Assets Abound

- Cryptocurrency, online businesses, digital intellectual property, social-media accounts, cloud-based records and electronically stored credentials create new fiduciary-access and administration issues. Digital asset inventories, RUFADAA authorization, custody arrangements and secure access protocols increasingly belong in routine estate planning.
- Many clients have significant art collections, car collections or collections of Elvis Presley memorabilia.
- Clients may own yachts or jets.
- Clients may have intellectual property or name, image, and likeness (NIL) rights to be considered.

Strategies in Action: The Harlan File

The legal developments above are abstract until they meet a family. This section walks the Harlan file through the law as it stands in 2026 and, in doing so, previews what the AI-enhanced, relational practice described later in this article actually looks like in a conference room.

What the First Pass Surfaced

Before the first meeting, the lawyer uploaded the 2012 trust, the completed intake form, the family's financial statement, and the IRA beneficiary designation to a secure AI system and asked it to identify what had changed, flag issues, and draft a meeting agenda. The output was a list; the lawyer decided what mattered and in what order:

Item	What surfaced
2012 plan	Formula clause designed for a $5.12 million exemption; no state QTIP provisions; Ellen was “the spouse” and not actively involved in planning.
Harlan Precision	$18 million S corporation; Michael runs it; no succession plan; stated goal is “everything equal.”
Dan's IRA	$3 million; beneficiary is Dan's old revocable trust with a conduit provision.
Ruth's QTIP	$10 million; Ellen and her brother want to terminate; no valuation, no tax reserve.
Kate	Massachusetts physician; malpractice exposure; married; has never met the firm.

Item	What surfaced
Nebraska	County inheritance tax on lineal heirs; portability not addressed if Dan dies first.

This is what arriving at the first meeting with a summary, a schedule of assets, and preliminary flags looks like. The AI produced the list. The lawyer supplied the judgment.

Strategy 1: Rebuild the Plan for Flexibility

- Revisit the structure of the formula clause and determine what makes sense now. Illustrate different approaches for the clients.
- Review opportunities for a second basis step-up on appreciated assets at the survivor's death.
- Revisit older irrevocable trusts in light of the current exemption and the QTIP trilogy.
- Consider estate tax exposure – the Harlans are above the exemption – and design strategies accordingly, including generation-skipping options.
- Address Nebraska inheritance tax on Michael and Kate; evaluate lifetime gifts and entity planning.
- Develop incapacity architecture for both spouses, with survivor protection and anti-interference provisions.

The relational move: Encourage both spouses to be involved. Provide a written plan with objectives before any document is drafted. The plan summary identifies the events that should trigger a call to the lawyer.

Strategy 2: A Succession Plan, Not Just a Tax Plan

- “Equal” and “fair” are not the same word. Ownership may follow responsibility while value is equalized elsewhere.
- Governance first: a board, a buy-sell agreement, key-person coverage, and a clear answer to what happens on Dan's incapacity.
- Evaluate § 1202 after OBBBA. Would a C corporation conversion create a QSBS exclusion for a future sale by Michael? Is there another way to create a QSBS opportunity?
- Choose lifetime transfer tools that fit the family first: GRATs, IDGT sales, family limited partnership interests, a non-grantor trust for Kate's share.
- Some families care most about tax. Others do not. Ask.
- Mentor and observe while Dan is alive.

Many founders have a tax plan and no succession plan. The conversation in which the father says, “I suppose we don't really want it to be equal,” is worth more than the first draft.

Strategy 3: The $3 Million IRA

The questions are familiar: Who are the beneficiaries? Conduit or accumulation? Is there a Roth conversion runway? Are QCDs or a charitable beneficiary appropriate? How does the IRA coordinate with the rest of the plan?

What the old designation does. The 2012 conduit trust forces every distribution out to the beneficiary. That was fine for a life-expectancy stretch and is a 10-year firehose today, with no creditor or divorce protection for Kate.

What the new design does. Spouse first (as an EDB), then accumulation trusts with a trust-rate tax model, partial Roth conversions in Dan's lower-bracket years, and the family's charitable intent satisfied with pre-tax dollars.

Strategy 4: Ruth's QTIP

What they want. Terminate the trust and distribute everything to Ruth, age 91. “Why keep it? We want to simplify.”

What* Lewis *says. Ellen and her brother would each make a gift of their remainder interests, valued under state law at Ruth's actual life expectancy, with no reduction for any power of appointment Ruth holds. Net of the avoided § 2207A(b) reimbursement, the gift is still very large.

What the estate planning professional does. Clarify objectives. Present the options: leave the trust alone; partial commutation; sale of the remainders for adequate consideration; use of Ruth's own exemption. Address gift-tax allocation and a reserve in any agreement. Document the transaction, the rationale, and how the transaction met the family's objectives. This is the slide to linger on in any presentation of the Harlan file: the family's instinct was reasonable and would have been catastrophic.

Strategy 5: Kate's Trust Must Survive Massachusetts

- Open class: Kate and her descendants, not Kate alone.
- Fully discretionary distributions by an independent trustee; no mandatory distribution at any age or event.
- Limited, not general, power of appointment.
- Situs and governing law chosen deliberately; a directed trust structure for investments.
- A premarital or postnuptial agreement conversation, handled with independent counsel.
- Asset protection against professional liability layered with insurance and entity planning.

The relational move: Kate meets the firm now, not at the funeral. She is invited to the family meeting. Her own plan and advisors are coordinated with her parents' plan.

Strategy 6: The Family Meeting and the “Why”

- Dan and Ellen explain their intentions in their own words; the lawyer records the reasoning in a planning memorandum that future lawyers, trustees, and children can read.
- Michael and Kate learn the roles they may assume and where the documents live.
- Advisors attend: the CPA, the wealth advisor, the insurance professional, and the corporate trustee.
- Annual topic rotation: investing, estate planning, the business, philanthropy, the economy.
- Trustee and beneficiary education before anyone has to administer anything.

  Everyone should understand not merely what the plan says, but why it says it.

Settlors sometimes do not understand their own trusts. The “why” may be the most valuable piece of information in the file – and it is the one piece the 2030 meeting described earlier cannot do without.

Artificial Intelligence

Artificial intelligence is no longer an emerging technology for the legal profession; it is becoming part of the infrastructure through which legal work is performed. Lawyers are already using generative AI for legal research, document review, summarization, drafting, contract analysis, meeting preparation, and other routine cognitive tasks. Adoption is accelerating quickly and becoming central to law firm workflows. The next development—agentic AI—will move beyond responding to individual prompts toward systems capable of carrying out multistep workflows with greater autonomy.

The more significant impact, however, may be on the economics and delivery of legal services rather than on any particular legal task. AI can dramatically reduce the human time required for work that historically supported hourly billing and traditional staffing models. Clients are beginning to expect that efficiency to be reflected in both service and pricing.

For estate-planning lawyers, this creates an important choice. AI can simply be used to draft more documents and process more matters, accelerating the traditional transactional model. Or lawyers can use the capacity created by AI to redesign the practice itself—spending less time on routine production and more time understanding families, developing sophisticated strategies, monitoring changes in the law, implementing plans, coordinating advisers, educating beneficiaries, and maintaining meaningful long-term client relationships. In that sense, the greatest opportunity presented by AI may not be to make lawyers less involved with their clients, but to give them the capacity to become more involved in the aspects of representation where human judgment, creativity, empathy, and relationships matter most.

What Exactly Is AI

Artificial intelligence is technology that enables computers to perform tasks that historically required human intelligence—such as understanding language, recognizing patterns, analyzing information, solving problems, making predictions, and creating new content.

Generative AI is a form of artificial intelligence that can create new content—including text, images, audio, video, and computer code—based on patterns it has learned from enormous amounts of information. Rather than simply retrieving an existing answer, generative AI can analyze information and generate a new response to a user's request.

The applications of generative AI in the estate planning practice include:

- First drafts of planning recommendations populated with client-specific facts — and, with appropriate care and review, first drafts of wills and trusts.
- Plain-English summaries of trusts, wills, and related instruments.
- Drafting directions for the funding and implementation steps an executed plan requires.
- Generating follow-up questions from a completed intake form.
- Comprehensive summaries of planning options formatted for client presentations.
- Synthesizing tax law developments into internal memoranda for attorney review.

Adaptive AI continuously improves by learning from new data, user behavior, and real-world feedback. Where a generative model is trained once and deployed, an adaptive model updates dynamically, refining its outputs based on ongoing input. It learns through reinforcement from user feedback — ratings, accepted or rejected suggestions, corrections. It learns from exposure to new data entering the training pipeline. It learns from aggregate patterns across thousands of users, not just from you. And vendors continuously test and deploy refined versions, frequently without any user-visible version change.

The applications of adaptive AI include:

- predictive research tools that refine results based on which authorities attorneys actually cite;
- trust review platforms whose clause-flagging accuracy improves as attorneys accept or reject flags across thousands of reviews;
- intake tools that learn which follow-up questions produce useful answers; billing fraud detection that adapts to evolving irregularities.

Perhaps the easiest way for a lawyer to think about AI is as a new form of cognitive leverage. For decades, technology primarily helped lawyers perform administrative tasks faster: word processing replaced typewriters, email replaced letters, and databases made information easier to retrieve. AI is different because it can assist with work we have traditionally thought of as *thinking work*: reading, summarizing, comparing, organizing, analyzing, brainstorming and drafting. It does not eliminate the need for lawyer judgment. Instead, when used effectively, it can dramatically expand the amount of information and number of perspectives a lawyer can consider before exercising that judgment.

What AI Is and Is Not

Consider a new client calls your office seeking assistance with estate planning. You might send the client an automated intake form. Most such intake forms presently use traditional rules-based automation. The form asks whether the client is currently married. If the answer is no, the form skips the questions about a current spouse. That is a decision tree a human wrote in advance. It cannot handle a fact pattern the drafter did not anticipate.

After you receive the completed intake form, you upload the completed intake form and the client's prior will and ask the system to identify what has changed since the last will and request that issues be flagged and a meeting agenda be prepared. You receive a response such as:

- The prior will leaves the residuary estate to a spouse, but the intake indicates the client is now divorced. The former spouse may remain a designated beneficiary depending on the applicable revocation-by-divorce statute and whether beneficiary designations on individual accounts were updated. Confirm before the meeting.
- The client now has a grandchild not addressed in the prior documents. If generation-skipping planning was previously considered, revisit.
- The closely held business interest appears to have increased substantially in value since the plan was drafted. Review current exemption planning and the succession provisions.

This is artificial intelligence. The output is not retrieved from a database. Instead, it is generated.

Artificial intelligence does not use judgment. After reviewing the intake form, the prior will and the output from the AI system, you meet with the client, get a personal update and discuss objectives. You craft a customized legal solution. This is judgment.

Traditional automation follows rules a human wrote. AI applies patterns learned from data and can respond to situations no one programmed for. While that flexibility is the value, it is also the source of a variety of risks and the reason that human judgment remains important in working with artificial intelligence – as well as any other technology.

What Has Already Changed

The following uses are no longer experimental in estate planning practices; they are in daily use:

- Intake synthesis and follow-up questions.

- Meeting summaries and agendas.
- First drafts from term sheets and recommendations.
- Prior-versus-proposed document comparison.
- Cross-document consistency checks.
- Research across statutes and regulations.
- Funding checklists and implementation directions.
- Plain-English summaries for clients.
- Monitoring of legal developments by client.

Generative tools draft; adaptive tools improve with use; agentic systems plan and execute multistep workflows. In every case, AI is a starting point, never an endpoint. AI is removing the least interesting parts of the job. That may be the best news the profession has had in years.

> **Harlan file:** The first-pass list in the Strategies section above was the product of exactly this workflow: upload the 2012 trust, the intake form, the financial statement, and the beneficiary designation; prompt the system to identify what changed, flag issues, and draft an agenda; then use AI to generate alternatives and use judgment to decide which makes the most sense. The point is not that the AI is impressive. The point is the capacity it returns and the judgment it cannot supply.

AI Has Become Expected, Not Optional

Clients are already using it. A client who has asked a chatbot to explain a SLAT before the first meeting is not an outlier anymore. Sometimes the client walks in with a draft. The instinct to dismiss that work is the wrong one. The better response validates the client's initiative, uses their output as a starting point for a more productive conversation, and demonstrates — concretely — what judgment adds that the chatbot could not supply. That demonstration is itself a business development event.

Fee reasonableness is in play. A Canadian court has reduced fees on the ground that they would have been lower had counsel used available AI tools.[16] Whether that reasoning migrates to U.S. courts is an open question, but the direction of travel is not hard to read. Fee realization may improve with AI; fee *defensibility* may eventually depend on it.

The competence rule is not static. Model Rule 1.1 and its comment 8 on technology do not distinguish between technologies a lawyer likes and technologies a lawyer finds inconvenient. The obligation attaches to the tools reasonably available to deliver competent representation. ABA Formal Opinion 512[17] applies the existing framework – competence, confidentiality, communication, supervision, candor, and fees – directly to generative AI tools.

None of this means every practitioner needs an enterprise platform and a data science budget. It means the practitioner needs a defensible answer to a simple question: what is your process, and how do you verify it?

[16]Cass v. 1410088 Ontario Inc., 2018 ONSC 6959 (Ont. Super. Ct. J.).

[17]ABA Standing Comm. on Ethics & Prof'l Responsibility, Formal Op. 512, Generative Artificial Intelligence Tools (July 29, 2024).

The Opportunity With AI For Estate-Planning Lawyers

The real opportunity for estate-planning lawyers with AI is the ability to create the type of practice that the lawyer wanted upon graduation from law school. The RISK is seeing AI only as a tool to do what you already do faster.

The questions to consider constantly are these: What can we now do for clients that wasn't economically or technologically possible before? In the estate planning arena, how can lawyers support the client's need for lifelong stewardship of family, wealth, risk and legacy? And how can I create a practice that is a lot closer to the life I imagined when I became part of the estate planning profession?

The Risks That Must Be Managed With AI

The risks that must be managed with generative AI include:

- **Hallucination.** AI is confident but often wrong. Nothing may be relied upon before verification.
- **Outdated law.** The training cutoff means the model may not know about a recent statutory amendment, a new regulation, or a decision issued last term.
- **Jurisdiction gaps.** Generative output drifts toward general principles. State-specific nuance requires attorney review, every time.
- **Confidentiality.** Client facts entered into a public tool may be used to train future models or stored on third-party servers. This is Model Rule 1.6 exposure that depends entirely on which deployment you are using.

Rule 3.3 candor and Rule 1.6 confidentiality both bear directly on generative use. Verify that every cited statute, regulation, and case reflects current law in the governing jurisdiction.

The risks that must be managed with adaptive AI include:

- **Model drift — the silent risk.** This is the most significant exposure adaptive AI creates for legal practice: the model's behavior changes in ways you do not notice. A trust review tool that reliably flagged trustee provisions last quarter may handle them differently after an update, with no notice to you.
- **Inconsistent outputs over time.** Unlike a static form or checklist, adaptive AI may produce different results on identical inputs at different points in time. Quality control becomes harder and verification becomes more important, not less.
- **Confidentiality in ongoing learning.** If client data improves the model — even anonymized or aggregated — there are Rule 1.6 implications that require scrutiny of the vendor's data use policies. This is not hypothetical. Several major legal AI vendors have revised their terms of service specifically to address whether user inputs contribute to model training.
- **Vendor dependency.** When a tool improves through use, the firm's workflow becomes calibrated to that specific tool's behavior. Switching costs, and the disruption risk if the vendor materially changes its model, are higher than with static software.

The professional responsibility implications track the technology. Under Rule 1.1, competence with adaptive AI is not satisfied once — the tool you understood six months ago may behave differently today, and periodic reassessment is part of the obligation rather than a best practice. Under Rule 5.3, supervision requires awareness that the baseline is moving; build verification habits that do not assume consistency. Under Rule 1.6, review vendor policies specifically for

language about model training. The question is not only whether your data is secure. It is whether your client's information is contributing to a system that learns from it.

Adaptive AI is the tool that improves without telling you it changed — which means your verification obligation never gets to stand still either.

One further point is specific to estate planning. In most practice areas, an AI error surfaces quickly. In estate planning, the error may not surface until 2044, when the documents are finally administered. Keep the review record: what AI was used for, what was verified, and by whom.

Agentic AI

Agentic AI operates with a high degree of autonomy. It is proactive: it anticipates needs, makes decisions, and takes action to accomplish a defined task. Its three core features are autonomy (operating without continuous human guidance), adaptability (learning from interactions and adjusting its approach), and goal orientation (programmed with clear objectives to achieve). It can also communicate with other AI systems.

The workflow inverts. With generative AI, the attorney prompts and the AI produces. With agentic AI, the attorney defines the goal and scope, the AI plans, the AI executes, and the attorney reviews the final output or designated checkpoints.

Emerging examples are already in the market. Research agents autonomously plan and execute multi-jurisdiction research and return a cited memorandum. Estate planning and administration workflow tools are incorporating checklists and deadline management. Monitoring agents track a client's regulatory environment, flag changes, and draft client alerts for attorney review. Intake agents analyze a completed form, run a conflicts check, draft an engagement letter, and open the matter file.

Ethics exposure is materially higher, in four specific ways:

- **Supervision gap.** The attorney is not present at each step. Rule 5.3 is hardest to satisfy precisely where autonomy is greatest.
- **Compounding errors.** A wrong assumption at step one propagates silently through every subsequent step.
- **Confidentiality exposure.** An agent may access, transmit, and process client data across multiple systems.
- **Accountability gap.** When the system acts autonomously, who is responsible for each intermediate decision?

Three governance requirements are non-negotiable before any agentic workflow touches a matter:

- A human checkpoint before anything reaches a client, a court, or opposing counsel — no exceptions.
- A verification step in which every citation and legal conclusion is independently confirmed.
- Documentation of what AI was used for on each matter, because courts and clients are beginning to require it.

Shifting From the Transactional Practice to the AI-Enhanced Legal Experience (as Distinguished from the AI-Efficient Law Firm)

Consider a Practice that Provides the AI-Enhanced Legal Experience

It remains important to distinguish between the AI-Enhanced Legal Experience (which is Google Maps) and the AI-Efficient Law Firm (which just does more transactions faster). The AI-Enhanced Legal Experience provides a better experience for the client and job satisfaction for the attorney.

AI-Efficient Law Firm	AI-Enhanced Legal Experience
"Now I can prepare twice as many estate plans."	Arrive at the first meeting with a summary, asset schedule, and preliminary recommendations.
Same intake, same meetings, faster drafting.	Model scenarios and research live in the room.
More clients, more matters, same treadmill.	Written plan and schematics before any document.
Hourly billing hands the productivity gain to the client as an unnegotiated discount.	Funding and implementation built in; monitoring agents flag law and life changes per client.
Existing clients become interruptions.	Family meetings, portals, and real availability.

Components of the AI-Enhanced Legal Experience

- **Better Planning**
  - At the first meeting, you arrive with a summary of the client, a schedule of assets and preliminary recommendations, which can be revised as you review with the client.
  - You are able to engage in real time research to answer questions that arise in the initial meeting.
  - You are able to model different scenarios readily during the meeting.
  - You provide a written plan and schematics before long complex documents. The client understands the plan before the documents are drafted.
  - The lawyer spends more time doing what AI cannot – building a relationship with the client and exercising judgment.
- **Better Implementation**
  - Estate plans often fail for failure to implement.
  - The AI-enhanced experience assists with funding and coordinating with other advisors.
- **Better Continuity**
  - Instead of the occasional newsletter summarizing law changes, AI assists in monitoring legal developments that affect specific clients. You can be notified by an AI agent to reach out to the client. A database, not a newsletter: client-specific triggers for proactive outreach.

    - Just as you can monitor legal developments, you can monitor life events for the client and reach out at a time that merits a review or change.
- **Better Relationships**
    - Family meetings are opportunities to coordinate and collaborate with all advisors, improving the client planning experience.
    - Meetings can also be used to facilitate education related to the transition of wealth to the next generation. Meetings can have presentations by investment advisors, accountants, trustees, insurance agents, and other professionals who can educate family members.
- **Level of Service that Enhances the Technology Experience**
    - Electronic portals for client documents that are easy to access and use matter to clients. This will be even more important as the Great Wealth Transfer results in more wealth in the hands of Millennials and Gen X.
    - Clients want ready access to services. Technology can assist by making scheduling easy and providing information that doesn't require the client to wait for you to have time to return their call.

What AI Cannot Replace

As AI replaces time consuming tasks, the lawyer becomes more valuable because the lawyer has more time to provide what AI cannot replace:

- Professional judgment.
- Wisdom developed through experience.
- Understanding family dynamics.
- Asking the question the client did not know to ask.
- Empathy.
- Credibility.
- Ethical judgment.
- Coordinating competing advisors.
- Understanding what a family is really trying to accomplish.
- Earning trust.

The AI-Enhanced Practice Allows the Estate-Planning Lawyer to Build a Relational Practice

The relational practice is a service model in which the lawyer's primary product is not the estate planning document but an enduring advisory relationship with a client and a family. Technology reduces the cost of routine production so that professional capacity can go to judgment, strategy, education, communication, and relationships.

The economic cycle inverts. Instead of volume, documents, completion, and the next client, it becomes understanding, planning, implementation, monitoring, education, family engagement, adaptation, and legacy. Better clients produce deeper understanding, which produces ongoing engagement, which produces stronger relationships, greater value, and — properly structured — appropriate fees.

The initial estate plan becomes the beginning of a relationship rather than a transaction. Fees compensate the lawyer not merely for drafting but for availability, expertise, judgment, continuity, and stewardship.

What fills the recovered capacity is the work most of us wanted to do in the first place: monitoring legal and tax developments; proactively identifying planning opportunities; periodic reviews; implementation and funding follow-up; coordination with CPAs, wealth advisors, and insurance professionals; family meetings; educating the next generation; preparing beneficiaries for inherited wealth; helping families talk about money at all; succession planning; philanthropy; responding to major life events; anticipating problems instead of solving them after the fact; and understanding what a family is actually trying to accomplish.

The estate planning lawyer becomes the family's legal counselor and the steward of the family's wealth, relationships, and legacy. AI creates the capacity that makes the model possible. It takes on the low-human-value work; the lawyer reallocates that capacity to the high-human-value work.

A Day in the Relational Practice

What does the relational practice look like on the calendar? Consider an eight-hour day, five days a week, forty-six weeks a year:

- **One hour of learning.** Read, attend, write, think. Stay ahead of changes and trends instead of catching up to them.
- **One hour of relationships and administration.** Client check-ins, advisor coordination, mentoring, team development, and the management details of the practice. Internal and external, every day.
- **Six hours of client work.** Meetings, planning, supervised AI production, and implementation. About 1,380 hours a year on a 46-week calendar.

That is about 1,840 hours worked in total, against 1,800 to 2,400 *billable* hours – and 2,500 or more hours actually worked – under the old model. The two calendars compare as follows:

The Treadmill	The 8-Hour Day
1,800–2,400 billable hours	About 1,840 hours worked in total
2,500 or more hours worked	230 hours of learning built in
Learning happens on weekends, if at all	230 hours of relationship building built in
Relationships happen when something goes wrong	About 1,380 hours of client capacity
Time off is a liability to the production system	Six weeks away from the practice

The numbers are not aspirational. They are the design constraint the fee model must satisfy. The model only works if AI and the team absorb production and administration.

Pricing in the New Model

The author of this article has been encouraging others to redesign the fee model since 2005 (and has actually successfully done so).

First, if you bill by the hour, the ethical rules don't let you charge more for doing work faster. If you stay with the billable hour model, you are going to be doing more work and making the same

amount. (You can, however, consider an hourly rate that is higher and considers your efficiency.) Clio's 2026 data confirms the problem: most solo and small firms made no pricing change after adopting AI.[18] The billing system produced the discount.

Consider instead designing your billing structure to reflect what makes you valuable as a lawyer who has used AI to create more capacity to build relationships with clients and create a positive estate planning experience for clients.

Reconsider the Process of Pricing

Begin with the life and the practice, then ask what the work must be worth to sustain it:

- **Revenue requirement.** Reasonable compensation plus overhead plus a reserve for reinvestment.
- **Capacity cost.** The revenue requirement divided by about 1,380 client hours. This is a floor, never a quoted rate.
- **Price the engagement.** By phase and complexity: intake, design, documents, implementation, and annual stewardship.
- **Check the portfolio.** How many relationships can you steward? The revenue requirement divided by that number is the target revenue per relationship.

Price the defined service to support professional development and overhead. Ethical rules require reasonableness of fees, whether hourly or alternative. Be clear about what you provide and price accordingly.

Illustrative Math

The numbers below are illustrative; each attorney substitutes his or her own.

- **$575,000 revenue requirement:** $350,000 compensation + $175,000 overhead and technology + $50,000 reinvestment reserve.
- **1,380 client-work hours** per year at six hours a day, 46 weeks.
- **About $417 capacity cost per hour** – a floor for engagement pricing, not a billing rate.
- **Per relationship:** if the practice can steward 60 families, the target is about $9,600 per family per year across planning, implementation, and stewardship. Fewer, deeper relationships; better economics.

Whether billing is by alternative fee or hourly, the estate planning professional is functioning differently – using capacity to eliminate time spent proofing and focusing on high-level strategy and judgment. That gain in capacity is what the price reflects.

Price the Plan in Phases

Price the plan. Do so in parts. Establish a fee for initial intake and consultation. The fee is earned at the time of the initial consultation. You will have gathered sufficient information to develop initial recommendations at the meeting.

Price the development of the plan. You might arrive at a plan at the initial meeting or it might take some additional development outside of the meeting after gathering additional information. Price accordingly.

[18]Clio, Legal Trends Report (2026) (reporting that most solo and small firms made no pricing change after adopting AI).

Price the phase that includes decision-making regarding what is incorporated into the plan and development of the tools to create the plan.

Price the implementation phase.

Price annual stewardship.

Most importantly, consider that pricing includes the value of the relationship.

The Guardrail: Reasonableness Runs to the Client

Reverse-engineering tells you whether a practice is viable; Rule 1.5(a) tells you whether a particular fee is permissible. Every price must stand on its own as reasonable for the value delivered, measured against the Rule 1.5 factors and market data. Frame the target as the practice's sustainability requirement, grounded in benchmarks, not as the lawyer's wish list. Use transparent, phased, written fee agreements so that the client understands the plan before the documents. And as noted earlier, fee defensibility may increasingly depend on using available technology.

Making this transition will allow you to capture the productivity gain. Firms that do not will experience the largest efficiency improvement in the history of this practice as a revenue decline, and many of them will blame the technology for a decision they made themselves.

Redesign the Client Journey

The relational practice has a defined journey, and each phase is priced and earned:

- **Intake and consultation.** The initial fee is earned at the consultation.
- **Plan design.** A written plan, with no documents yet.
- **Documents.**
- **Implementation and funding.** Most estate plans fail for failure to implement. Make implementation part of the product.
- **Six-month follow-up.**
- **Annual stewardship.**

Supporting the journey: an estate plan summary that identifies the events that should trigger contact; a database (not a newsletter) of client-specific triggers for proactive outreach; a useful portal with scheduling and information that do not wait for a returned call; and family and beneficiary education built into the standard engagement.

Measure What Matters

A practice gets what it measures. The transactional practice measures production. The relational practice measures relationships.

The Old Model	The New Model
New matters	Revenue and profitability per relationship
Billable hours	Client retention across generations
Documents completed	Frequency of meaningful client contact
Matters closed	Advisor collaboration

The Old Model	The New Model
Revenue generated	Developing others; client and team satisfaction

Action Steps

- Define your firm's product as a comprehensive planning model.
- Identify the clients you want to serve.
- Redesign the client journey.
- Use AI to eliminate low-value work.
- Use AI to create capacity, not volume.
- Reinvest the capacity that AI creates.
- Redesign the fee model.
- Build proactivity into practice.
- Create an advisor ecosystem.
- Build relationships.
- Protect thinking time.
- Build your team.
- Measure what matters.

Four Moves Before the Quarter Closes

- **Run the remediation sweep.** Find plans built on pre-2026 assumptions. Review formula clauses, funding provisions, and disclaimers. Do not wait for the client.
- **Reprice one service line.** Move one predictable category from hourly to a defined engagement price. Measure. Then expand.
- **Bring in the next generation.** Family meeting, successor introduction, trustee education. Make the future client visible today.
- **Write the AI policy.** Then train people on it. Then review it. A policy nobody understands is just another document.

Make the Shift Gradually

Select a small group of clients for a practice pilot. Design the enhanced experience. Develop pricing. Use AI to support the model. Measure client response and profitability. Refine the model. Expand the model to additional existing (not new) clients. Gradually reduce the dependence on low-value transactional work. Protect thinking time. Redefine the team around highest and best use, and train everyone to recognize client needs and relationship opportunities.

The result: fewer but higher-quality relationships. Better economics. Intelligent leverage. More humanity.

Conclusion

The Great Wealth Transfer will move extraordinary amounts of wealth between generations, but wealth will not be the only thing transferred. Relationships with lawyers, accountants, financial

advisers, trustees, and other professionals will transfer as well. At the same time, changing tax laws, increasingly complex families and assets, new risks, and rapidly evolving technology make it less realistic than ever to think of an estate plan as a collection of documents that can be signed, placed on a shelf, and revisited years later. The estate-planning lawyer who remains focused primarily on producing documents risks becoming increasingly efficient at delivering a product that clients need less than they need an ongoing relationship with a trusted adviser.

Artificial intelligence gives estate-planning lawyers an opportunity to choose a different path. Like the evolution from the paper map to intelligent navigation, the real transformation is not simply doing the old task faster; it is creating a fundamentally better experience. AI can assume more of the routine work of gathering, organizing, researching, comparing, monitoring, and drafting so that lawyers can devote more of their capacity to the work that requires judgment, creativity, wisdom, empathy, and trust. The estate-planning practice of the future can be less transactional and more relational—one in which the lawyer does not simply prepare the map and send the client on the way, but remains alongside the family as circumstances change, helping them navigate wealth, risk, relationships, opportunity, and legacy across generations. That is not a diminished role for the estate-planning lawyer. It is a much larger one.

Back to 2030

Return to the meeting described at the beginning of this article. The successor trustee opens the file. The children ask why. This time there is a planning memorandum that explains the reasoning, a family that heard it from their parents, a trustee who was trained, and a lawyer who was still in the relationship when it mattered.

The lawyer's greatest value in that moment will not be that the original document was generated quickly. It will be that someone understood the family well enough to create a plan that made sense, and documented the reasoning well enough that another human being could understand it years later.

The issue is not whether you will have a job. It is whether you will build and design the practice that lets you achieve things you didn't believe possible and leaves the painful parts of practice to technology.

What kind of lawyer, and what kind of person, can I be if I finally have the time?