

The Keys to Passing it On |

The Keys to Passing It On: A Christian Legal Perspective

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The Keys to Passing it On |

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- 25 + years of experience with expertise in:
 - Trust and estate planning
 - Elder law
 - Probate litigation
 - Probate administration
 - Charitable planning
 - Asset protection and planning
- Some of his many affiliations:
 - Wealth Counsel® and Elder Counsel®
 - Metropolitan Denver Christian Legal Society Board Member
 - Centennial Institute, Business Council
 - Board of Christian Medical Ministry to Cambodia/Jeremiah's Hope
 - Board of Praise Him Ministries, a CO foundation that works with CBN
 - Current Elder at Mission Hills Church, Littleton
 - Board of HighPointe Services, a Colorado non-profit serving developmentally disabled adults
 - Centennial Institute Business Council, Colorado Christian University

• He believes that each client is unique and plans specially to each client's desires and needs, including a rarity among attorneys: he will help you to integrate a Christian perspective into the planning process.



The Keys to Passing it On |

What are we passing on?

- A Biblical legacy
- Biblical stewardship
- Family harmony
- Peace of mind



The Keys to Passing it On |

A Biblical legacy



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Will I leave others an inheritance
or will I leave a legacy?



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An inheritance is a blessing:

Proverbs 13:22: A good man leaves an inheritance to his children's children; but the wealth of the sinner is laid up for the just.

Proverbs 20:21: An inheritance may be gotten hastily at the beginning; but the end thereof shall not be blessed.



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But our inheritance from Christ is eternal:

Ephesians 1:

In Him ¹¹ also we have obtained an inheritance, having been predestined according to His purpose who works all things after the counsel of His will, ¹² to the end that we who were the first to hope in Christ would be to the praise of His glory.



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Biblical stewardship



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Are we faithful stewards of the greatest treasure?

1 Cor. 4:

1 So then, men ought to regard us as servants of Christ and stewards of the mysteries of God. 2 Now it is required of stewards that they be found faithful.



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Are we faithful stewards of our time?

Ephesians 5

15 Therefore be careful how you walk, not as unwise men but as wise, 16 making the most of your time, because the days are evil. 17 So then do not be foolish, but understand what the will of the Lord is.



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Are we faithful stewards of our possessions?

Matthew 6:

19“Do not store up for yourselves treasures on earth, where moths and vermin destroy, and where thieves break in and steal. **20**But store up for yourselves treasures in heaven, where moths and vermin do not destroy, and where thieves do not break in and steal. **21**For where your treasure is, there your heart will be also.



The Keys to Passing it On

Are we faithful stewards of our possessions?

Matthew 25:

19“After a long time the master of those servants returned and settled accounts with them. **20**The man who had received five bags of gold brought the other five. ‘Master,’ he said, ‘you entrusted me with five bags of gold. See, I have gained five more.’ **21**“His master replied, ‘Well done, good and faithful servant! You have been faithful with a few things; I will put you in charge of many things. Come and share your master’s happiness!’



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Stewardship principles:

- Proper stewardship should include the final distribution of our assets.
- It should also include instructions about the care that we want for ourselves and our families.
- We should consider a charitable disposition of some of our assets in keeping with Biblical tithing principles.
- We should describe and convey the love that we have for our family and our friends.



The Keys to Passing it On



What are the keys to “passing it on”?

- Wisely manage and control your property for you and your loved ones while you are alive and competent.
- Plan and provide for your care and the care of your loved ones in the event of a physical or mental disability.
- On your death, giving what you have to whom you want, the way you want, when you want, all at the least possible overall cost in taxes, court costs, attorney’s fees and administrative expenses, keeping Biblical principles in mind throughout.



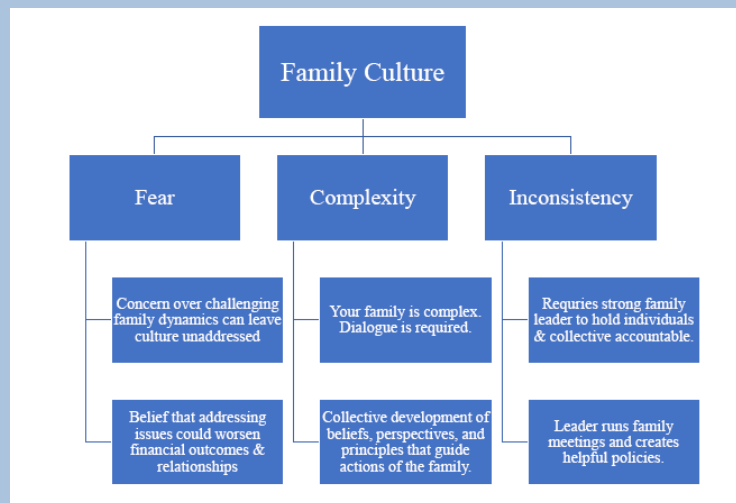
The Keys to Passing it On

What tools are available to manage and control your property for you and your loved ones while you are alive and competent?

- Clearly communicate your desires and intentions
 - To all of your family and advisors
- Ensure you have current estate planning
- Write down and share your intentions
- Organize your affairs
- Plan for a rainy day
- Plan for your incapacity
- Plan for your death



The Keys to Passing it On



The Keys to Passing it On |

What tools are available for your care and the care of your loved ones in the event of a physical or mental disability?

- Trust based incapacity planning
- Durable power of attorney
- Healthcare planning
 - Healthcare power of attorney
 - Releases
 - Living will/advanced directive
 - Medical order for specific treatment (MOST)
- Technology tools



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- Technology tools
 - Allow “aging in place”
 - Consultants can provide an evaluation
 - Three key technologies:
 - In-home and remote monitoring:
 - Integrated sensor systems (Alarm.com)
 - Alert monitoring (ADT)
 - Wearable sensors (MyNotify)
 - Smartwatches (Kanega by UnaliWear)
 - Mats
 - Video tools (Ring, SafelyYou wall mounted camera)



The Keys to Passing it On

- Technology tools
 - Three key technologies:
 - In-home aids:
 - Digital thermostats (Nest etc.)
 - Smart refrigerators (track food storage)
 - Smart pill dispensers
 - Remote light switches and electricity management (Wemo, Nest)



The Keys to Passing it On

- Technology tools
 - Three key technologies:
 - Smart homehubs:
 - Amazon Alexa
 - Google Home
 - Apple Siri



The Keys to Passing it On |

What tools are available to allow you to give what you have to whom you want, the way you want, when you want, all at the least possible overall cost in taxes, court costs, attorney's fees and administrative expenses?

- Current will
- Current trust(s)
- Current beneficiary designations
 - Qualified plans
 - Insurance policies
- Charitable giving
 - To provide for Christian charities
 - To reduce conflict and help heirs
- Personal property memo
 - Lifetime giving options
- Digital asset planning



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Digital asset planning

- Make sure your WILL gives your personal representative power to handle your digital assets:



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Digital asset planning

- What are digital assets?
 - Include a comprehensive definition in your trust, will and durable power of attorney
 - *Digital assets include my sent and received emails, email accounts, digital music, digital photographs, digital videos, gaming accounts, software licenses, social-network accounts, file-sharing accounts, financial accounts, domain registrations, Domain Name System (DNS) service accounts, blogs, listservs, web-hosting accounts, tax-preparation service accounts, online stores and auction sites, online accounts, and any similar digital asset that currently exists or may be developed as technology advances.*



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Digital asset planning: WILL

DIGITAL ASSETS

My Personal Representative has the authority to access, modify, control, archive, transfer, and delete my digital assets.

My digital assets may be stored in the cloud or on my own digital devices. My Fiduciary may access, use, and control my digital devices in order to access, modify, control, archive, transfer, and delete my digital assets—this power is essential for access to my digital assets that are only accessible through my digital devices. Digital devices include desktops, laptops, tablets, peripherals, storage devices, mobile telephones, smartphones, and any similar software or hardware that currently exists or may be developed as technology advances.



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Digital planning

- Use a virtual assets instruction letter

VAIL

Virtual Assets Instruction Letter



The Keys to Passing it On

Digital planning

- Use a virtual assets instruction letter

You can use this form to create a "Virtual Asset Instruction Letter" or "VAIL." A VAIL lists all of your online accounts and assets, with web addresses, user names, and passwords to give your designated representative the ability to identify and access these accounts.

Place this VAIL in a safe location, such as a safe deposit box, that can only be accessed by your legal representative. In addition to this written list, consider saving your VAIL to a flash memory drive. For security purposes, we do NOT recommend saving this document on your computer's hard drive.

Feel free to print and make copies of any pages should you need to provide additional information.

Your Virtual Assets

This form divides your virtual / digital assets into five categories:

1. Email
2. Banking & Financial: include online shopping accounts, automatic bill payments, credit card, checking, PayPal, eBay, saving and investment accounts.
3. Social Media: include Facebook, Twitter, Linked-In, Pinterest, etc.
4. Online Memorabilia: Shutterfly, YouTube, blogs
5. Other: any other virtual assets such as websites, legal or other documents stored online, online subscriptions, music, books, etc.



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Digital planning

- Use a virtual assets instruction letter

Designated Agent

With each account, we give you space to identify the person you would like to handle the account – your Designated Agent. While the executor of your estate is someone you trust, that person may not possess the knowledge or technical savvy to handle your virtual / digital assets. You may want to designate a younger family member to administer some or all of your digital assets.

Instructions

You also may specify that the responsible person do something in particular with your account, such as post a prepared message upon your passing, delete the account immediately or wait a certain period of time, so that photos can be printed or saved and distributed to family members. Outline your directions in the "Instructions" section for each account.



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Digital planning

- Make sure your DURABLE POWER OF ATTORNEY gives your agent power to handle your digital assets:



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Digital asset planning: DURABLE POWER OF ATTORNEY

Power to Manage Digital Assets

My Agent may access, modify, control, archive, transfer, and delete my digital assets.

My digital assets may be stored in the cloud or on my own digital devices. My Agent may access, use, and control my digital devices in order to access, modify, control, archive, transfer, and delete my digital assets—this power is essential for access to my digital assets that are only accessible through my digital devices. Digital devices include desktops, laptops, tablets, peripherals, storage devices, mobile telephones, smartphones, and any similar hardware that currently exists or may be developed as technology advances.



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Digital planning

- What if you don't have a will or a durable power of attorney?
- What if your will or durable power of attorney does not give your fiduciary the power to handle digital assets?



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Digital planning

- Revised Uniform Fiduciary Access to Digital Assets Act (“RUFADAA”)
 - RUFADAA sets forth the circumstances under which a fiduciary is allowed (or may gain) access to digital assets
 - Applies to decedents, will makers, trust makers, and protected persons (“Persons”)
 - Also takes into account
 - the privacy interests of Persons
 - the interests of the custodians of the digital assets
 - A custodian is the person or entity that carries, maintains, processes, receives, or stores a digital asset of a user (banks, Google, Yahoo, Facebook)
 - RUFADAA places first importance on the intent of a Person and limits a fiduciary’s automatic access to the content of the Person’s digital communications absent their consent or a court order.



The Keys to Passing it On

Digital planning

- Revised Uniform Fiduciary Access to Digital Assets Act (“RUFADAA”)
 - An “online tool” is a tool provided by a custodian that allows the Person to give directions for the disclosure or nondisclosure of his digital assets to a third person.
 - Examples of online tools include Google’s inactive account manager and Facebook’s legacy contact.
 - RUFADAA provides that the Person may use an online tool to direct the custodian to disclose certain information to a designated recipient and, under certain circumstances, this direction may override a contrary direction provided by the Person in his will, trust, power of attorney, etc.



The Keys to Passing it On

Digital planning

- Revised Uniform Fiduciary Access to Digital Assets Act (“RUFADAA”)
 - Absent a designation in an online tool, RUFADAA provides defaults for what parts of the Person’s digital assets a fiduciary may access and how a fiduciary may gain access to additional information.
 - However, a contrary direction in a governing instrument controls.
 - Personal representative. Unless the decedent consented, a PR may not access the content of the decedent’s electronic communications unless he obtains a court order finding the disclosure of the content of the communications is reasonable necessary for the administration of the estate.
 - However, a fiduciary can still get a “catalogue” of emails, even if he can’t get emails
 - Even absent express consent, a PR may access a decedent’s other digital assets.



The Keys to Passing it On

Digital planning

- Revised Uniform Fiduciary Access to Digital Assets Act (“RUFADAA”)
 - When a trustee is the original user or account holder for the digital asset, the trustee may access all digital assets, including the content of electronic communications.
 - When the trustee is not the original user or account holder, he may access the content of electronic communications only if it is specifically authorized by the trust.
 - Even absent express consent, the trustee may access the trust’s other digital assets.
 - A conservator may access the digital assets of the protected person only pursuant to a court order that was entered after the opportunity for a hearing.
 - An agent under a power of attorney may access the content of the principal’s electronic communications to the extent authorized by the power of attorney.



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Digital planning

- Revised Uniform Fiduciary Access to Digital Assets Act (“RUFADAA”)
 - RUFADAA doesn’t affect a fiduciary’s duty to manage assets
 - And doesn’t affect the duty of care, duty of loyalty or duty of confidentiality



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What tools are available to reaffirm my faith and reduce conflict?

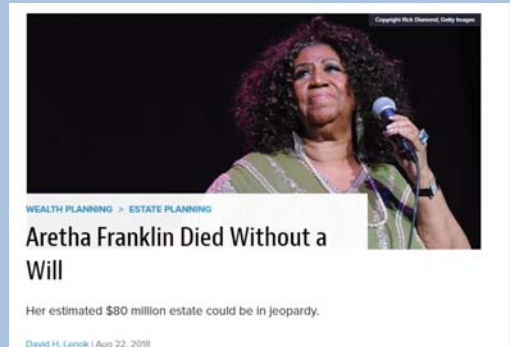
- Christian preambles/statements of faith/ethical wills
- Christian conciliation clauses
- Faith oriented health care powers of attorneys
- Evaluate fiduciary designations as often as needed
- Teach and practice stewardship in life and death



The Keys to Passing it On

What if I do nothing?

- The state has a will for you



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What if I do nothing?

- Probate will be messy and full of conflict
- If you become disabled, conservatorship issues will arise
- You will ensure that none of your best intentions and desires will be carried out



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Family harmony



The Keys to Passing it On

What happens when there is no planning or it is challenged?

- Family disputes quickly dissipate wealth
- Family disputes often result in lifetime irreconcilable conflict
- Seemingly nice people turn into monsters
 - And sue their own siblings



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What can we do to avoid/limit conflict?

- Prevention
 - Clear and comprehensive documents
 - Family discussions
 - Communicate intentions: fiduciary designations and property distributions
- Do something! Take stock of causes
- Seek Biblical resolution



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What can we do to avoid/limit conflict?

- Communicate what happens if a family member escalates
- Include ADR clauses in your planning
 - Christian conciliation?
 - Resolve issues while you can; don't wait for death
- Decide what planning tools are best
 - Unequal distributions?
 - Professional fiduciaries?
 - Disinherit a child?
 - Communicate decisions



The Keys to Passing it On

Peace of mind

John 14

²⁷ Peace I leave with you, My peace I give to you; not as the world gives do I give to you. Let not your heart be troubled, neither let it be afraid. ²⁸ You have heard Me say to you, 'I am going away and coming *back* to you.' If you loved Me, you would rejoice because ^[h]I said, 'I am going to the Father,' for My Father is greater than I.



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