

FAIR, BUT NOT EQUAL IN ESTATE PLANNING

THROUGHOUT THEIR FORMATIVE YEARS, children challenge parents' definition of fairness. In some households, fair means equal shares. Others take a "we love you all the same, but give according to need" approach. While never easy, explaining why the child who lost a tooth should get the last popsicle is less debatable than announcing who gets the vacation home. The issue of dividing resources among children crystallizes in the estate planning process. Distributing assets equally isn't always the best way to address each child's unique needs, circumstances, and contributions to the family legacy. Family businesses, vacation homes, and art collections all add value to an estate beyond money. Absent proper planning, the next generation must sort through the financial, as well as the sentimental value equations by themselves. Even families with the strongest of bonds find it a difficult task. One journalist described it as tossing a grenade that you will not be around for when it explodes. Here are just a few examples of scenarios where a distinction in the estate planning process between "fair" and "equal" may make the difference between family harmony and family strife.

WHEN FAIR DOESN'T MEAN EQUAL

IN BUSINESS

If you are a business owner, your estate planning challenges extend beyond figuring out who gets the family heirlooms. You must determine the fate and disposition of your business. Many factors play into the analysis, but your long-term business goals serve as a good starting point. If you want the family business to continue after your death, we'll urge you to consider the relative contributions to the business made by each child, and how to reward those contributions. It's common for one child to work at the business, while their siblings pursue other careers. Should the children sell the family business and split the proceeds evenly? Should the business go to the child who works in it, with the understanding that he or she must buy out the siblings? What about the third generation? What if the business is more or less profitable in the future than it is today? Should it be sold during your lifetime?

We urge clients who own a business to think about all of these questions, and many more. Once we have evaluated the options, we look at the latest financial products and solutions that fit. For example, we might consider using life insurance as an equalizer. Under this strategy, the child involved parties in the business inherits the business, while the uninvolved parties receive an equivalent inheritance from life insurance and/or other non-business assets. This is just one possible solution; there are many others including selling the business during your lifetime, or giving shares of the business

to beneficiaries now and continue gradually over time. Your family dynamics will guide our recommendations, but one thing is clear: we will urge you to clarify your intentions, put them in writing, and discuss them with your children.

SPECIAL NEEDS

A child with special needs brings complex financial and emotional concerns, particularly when it comes to planning for a future that doesn't include you. There are steps you can take, like establishing a Special Needs Trust (SNT), to ensure the child gets the lifetime quality care required. Assets held in a Special Needs Trust, much like other trusts, are not part of your estate. Such a trust allows you to specify how you would like the funds used, and who will oversee the trust.

DEPENDENCE

Some adult children require more financial and emotional support than others due to limited financial means, chemical dependencies, divorce, or unemployment. While siblings may have been neutral about your level of support to their sibling during your lifetime, it may have been because it didn't have a direct adverse impact on them financially. However, after you die, they may feel differently. Your other children may feel that their dependent sibling has diminished the estate already and should receive a lesser amount. There are several ways to handle such a situation in the planning process. You might decide that your support is a thing of the past

and leave shares equally. Another possible alternative is to reduce that child's inheritance by the amount of support you've provided over the years. However, keep in mind, that an adult child who had rough patches may carry debt. Absent taking precautions to protect your assets from creditors (such as an irrevocable trust), all could be lost.

SUCCESS

If one of your adult children has attained wealth in his or her own right and another works as a social worker and has a mountain of student loans to repay, you may want to leave more to the social worker. Another alternative is to skip a generation. The wealthy offspring may appreciate the opportunity to avoid the gift tax liability in favor of passing the inheritance to the next generation or to a sibling in a lower tax bracket.

FISCAL RESPONSIBILITY

Once a beneficiary has possession of the assets you have left them, they can do with the money what they see fit. This might not be a good option for someone who can't control their spending. If you have a child who lacks the ability to manage an inheritance responsibly, you might consider establishing a trust. Using this strategy, you designate a trustee to oversee the management and distribution of assets from the trust. The strategy limits your child's access to funds, and protects those assets from creditors. Other options include providing the inheritance in stages as opposed to a lump sum.

CAREGIVING

As recently reported by *Time Magazine** siblings may hold fiercely different positions about what they should do when their parents need a caregiver. Some make huge sacrifices of time and money while others rarely visit. If you have one child who has taken on a disproportionate share of your care, you may want to recognize those contributions in some meaningful way. A potential solution could be to provide compensation to the caregiver during your lifetime. A caregiver who is reluctant to accept payment may think otherwise once they understand that the alternative would mean an imbalance in the inheritance.

VACATION HOMES

It is not uncommon for vacation property to become a catalyst for conflict when there is no instruction as to its disposition. Often

siblings' views on the vacation home differ as greatly as their views on caregiving. One child may treasure the chance to escape to the vacation home, while another may consider it a source of quick cash, and yet another could view it as a potential primary residence. It is difficult for siblings to reach consensus on the disposition of vacation property, particularly as families expand adding new generations and in-laws. We typically encourage clients to talk to children to ascertain their interest in keeping the property, and to gauge their willingness to pay for it and its upkeep. This will give you a good sense of the role the vacation property should play in the inheritance.

SECOND MARRIAGES & BLENDED FAMILIES

Second marriages and blended families can add a layer of complexity to an estate plan. A person in a second marriage may wish to continue to support their spouse after they die, yet also protect their children's inheritance. Another common scenario occurs when more is left to biological children than stepchildren to preserve the biological children's inheritance in the event that the step-parent remarries. If you are in a second marriage or have a blended family, you should carefully review your beneficiary designations and account titles, as they could override the Will. We typically suggest including a "no contest" clause in the Will. This way, if a child or spouse challenges a beneficiary designation, that person forfeits their share of the estate. We also explore other potential solutions to ensure that spouses, biological and stepchildren receive the intended inheritance by using strategies such as revocable trusts, qualified terminable interest property trusts, and irrevocable life insurance trusts.

COMMUNICATE INTENTIONS

Even minor discrepancies in inheritance that come as a surprise may drive a wedge between your children. Failing to discuss your distribution plans with your children is like telling a toddler that their little sister gets the last popsicle, "because you said so." The heirs will be left to guess at your intent. No matter what age or maturity level, if your children learn of uneven distributions through the probate process, it could trigger unhealthy resentment or suspicion.

You could prevent future conflict by discussing your estate plans with your children. Explain your decisions and give them an opportunity to share their feelings and to be heard. If you are not comfortable in discussing the matter, you could also write a letter or series of letters and include them with your will.

* Time Magazine, "Caring for Aging Parents: Should There Be a Law?" July 22, 2013

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