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Divide Your Estate — Not Your Family

Do you know there are helpful estate planning tools you can use to manage family conflict even after you're gone?

To the extent we think about it at all, we tend to think of estate planning as involving issues we can control. Given our financial circumstances (and current tax law), we make rational decisions about the distribution of assets to our heirs. Doesn't that make estate planning something of an intellectual exercise? In the best of worlds, it probably is. But in our world it's often a family's emotional issues that disrupt a carefully laid-out estate plan.

Let's explore some of the estate planning tools that you can use to address specific areas of family conflict.

Sibling Rivalry

Paul and Mary are brother and sister, and they've argued over everything since they were toddlers. They generally make it a point not to agree on anything. Their parents are putting together their wills and have decided to name Paul and Mary coexecutors to administer their estates. Many parents do this. They feel that they should name a child as an executor, and they don't want to leave another child out. If the kids really can't agree, this isn't a good idea. Their disagreements can delay the administration of the estate, drive legal costs up, and create a great deal of ill will.

What are the other options here? The parents could, of course, choose the one child who they think would do the best job. If that isn't practical, the parents might consider choosing a third party, either another nonsibling family member or a professional executor.

Who Gets the Van Gogh?

Most families own a couple of special objects — from a painting on the wall to a rocking chair on the porch — that everyone wants. Some of the worst family disagreements arise over the disposition of these objects.

How do you handle this property division issue? The first thing to recognize is that the actual object may not be what the fight is about. Two family members bickering over a family heirloom may be rehashing an argument that started over the Thanksgiving dinner table 20 years ago. So, however you choose to divide property, don't forget that the actual property may be less important than the emotional conflict behind it.

There are a few things that you may want to avoid in this situation. Don't leave it up to the warring parties to divide the assets. That generally leads to potentially expensive battles and heartache. Some people leave these property division issues to an impartial executor. That can work, but it can be tough on your executor. Finally, try not to promise the same object to more than one person. Crazy as it sounds, many people trying to avoid conflict end up making this mistake.

What do you do? If it's important to you that certain individuals receive specific personal property, make the property division yourself. And communicate openly with your heirs about how and why you made the decision. Open communication is the best way to address the emotional conflicts that lead to the property fight in the first place.

Fair vs. Equal

Parents often say that they want to treat their children fairly, and they automatically equate "fairly" with "equally." But that need not be the only approach. Let's take a quick look at two examples.

Say you own a family business, and your daughter, Amy, gave up a promising legal career to work in the business. She's worked very hard, and the business has grown substantially through her efforts. Your other daughter, Helen, isn't involved in the business. Should you leave your business to Amy and Helen 50-50? Is that fair to Amy, who's worked so hard to build the business?

You'd probably like the entire business to go to Amy even if you don't have enough other assets to leave an equal legacy to Helen. What do you do? If you have enough nonbusiness assets to put together an adequate legacy for Helen, your estate plan may still work well. If you don't, a common fix is to purchase a life insurance policy on yourself for the benefit of Helen. The policy's death benefit will fund Helen's legacy.

Another common example in the fair-versus-equal category is the child who becomes the primary caregiver for an elderly parent. Depending on the circumstances, it may make sense for that child to receive a larger portion of the parent's estate than his/her siblings.

Blended Families

Treating everyone fairly is also a common issue in families that include children from more than one marriage. Open communication is particularly important when balancing the needs of these potentially competing family members. Among the various planning tools available, prenuptial agreements can play a key role. Life insurance can help too. A policy can provide a legacy to children from a prior marriage, freeing up other assets for a second family.

Troubled Beneficiaries

Rick and Lisa have two children to whom they'd like to leave substantial assets — Jill, who's fiscally responsible, and Steve, who has an ongoing battle with substance abuse. Rick and Lisa have no problem with leaving assets outright to Jill, but they're worried about Steve spending his way through any assets they leave to him. What can they do? Rick and Lisa can leave assets to Steve in a trust. A

trustee of their choice would then administer the assets and pay Steve an income. The trustee, under predefined circumstances, could also pay out trust principal to Steve.

Trust planning can also be useful if you have an heir who is in a troubled marriage. Leaving assets to the heir in a properly drafted trust may protect the trust's principal from being lost during the heir's subsequent divorce proceedings.

Wrong Trustee?

John and Martha are married with a grown child, Bill, and have a large enough estate to trigger an estate tax problem. As part of their estate tax planning, their attorney has advised John and Martha to set up credit shelter trusts, which shelter assets from the federal estate tax. (In 2007, up to \$2 million can be excluded from the estate tax.) Let's take a quick look at some of the potential nontax consequences of this common tool.

Assume, for instance, that John dies first. After his death, a portion of his assets will be placed in the credit shelter trust. Martha may receive an income from the trust during her life, and any assets remaining in the trust will pass to Bill at Martha's death. Martha may also receive distributions of principal from the trust at the trustee's discretion.

As is commonly done, John has named Bill as the trustee of the credit shelter trust. Is this a good idea? While it can be heartwarming to name a family member as trustee, it can also lead to family conflict. If Martha were to need principal distributions from the trust during her lifetime, she'd have to ask her son, the trustee, for them. In many families, that could be a problem.

In some situations, it may be desirable to avoid circumstances where a parent is forced to ask a child for money, especially when the money came from the parents in the first place. It might be better for all concerned to choose an impartial trustee.

Principal vs. Income

There's another potential problem in the last example. The son, as trustee, must invest trust assets to provide an income for his mother during her lifetime. Whatever's left over in the trust at his mother's death will pass to him. That creates a potential conflict of interest: The son can invest in such a way as to maximize his mother's income and minimize the remainder that he'll receive. He could also invest in such a way as to maximize his own inheritance at the expense of his mother's income. Traditional trust law requires a trustee to balance these issues, but there's no guarantee that every individual trustee will act accordingly.

Similar issues exist in many trusts. Whenever you have a class of income beneficiaries and a class that receives the remainder of the trust assets at the end of the income payments, you have a potential conflict. How do you minimize it?

The most important thing is to make your wishes known. If you want to emphasize the interests of one beneficiary class over the other, make it clear in your trust. You also need to choose

your trustee carefully. Pick an impartial trustee — a family member who's outside of the fray, a trusted advisor, or maybe a commercial trustee.

Because this article covers a very complex topic, it should not be viewed as specific tax or legal advice. Before making any changes to your own planning, you should consult with your accountant and/or attorney.

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