

Making Important Family Decisions

written by warburton | April 5, 2022

Planning for a family's transfer of their wealth, plans for incapacity, and executing on those plans can be a significant challenge for both clients and their trusted advisor(s). Clients look to their trusted advisors for guidance when it comes to defining and executing their estate plans for future generations. It is critical that a trustee or directed fiduciary understand each of these variables, including family dynamics, and how they align with one another. What's even more difficult is that there no clear, repeatable rule when developing an estate plan. Trusted advisors must rely on broad, guiding principles to accomplish one's most important family responsibilities. After all, each family member is unique and has unique life circumstances.

Why is estate planning so important?

While it is hoped that families will work together to make sure one's wishes are carried out, more often than not families don't agree with one another. And, what's intended to happen and what actually happens are rarely the same. There are many horror stories of families being torn apart by fights over money, property, and possessions after the death of a family member. None of us like to believe that our family could behave so badly but when money and emotions collide, hurtful, irreparable comments can tear a family apart. Estate planning can help mitigate you don't put your family in a position where they are at risk of ruining relationships.

Anyone can write a will, but a skilled estate planner also understands family dynamics. From the parent who enables a financially irresponsible child to the daughter who wants to tell her mother what to say in her will, family members can make estate planning complicated.

And these dynamics may be so ingrained that the client isn't even aware of them. Take, for example, the client who wants to leave the family business to a pair of siblings that are barely on speaking terms. The client may be so intent on being fair and keeping the business in the family that he doesn't see that the plan can never work. A good estate planner must be able to spot these sorts of problems

and offer the client more appropriate options.

Another common issue is dealing with blended families. A simple estate plan may lack the foresight to provide for children from a previous marriage. For example, if one's assets are left to his or her spouse, he or she may not want to leave those assets to their deceased spouse's children from another marriage. This, in essence, leaves these children disinherited. Therefore, individuals who are in this position need to ensure that their wills and trusts clearly provide protection for these children.

Who will administer your estate when you are gone? People often don't give much critical thought to this decision. That can be a big mistake. It is recommended that you don't just choose the eldest child or the child that is living closest to you. Using such arbitrary criteria isn't in anyone's best interest. Naming multiple family members as executors because you are afraid someone's feelings will be hurt is also not a good idea.

Estate Planning Issues to Consider...

- **Make realistic plans.** In their eagerness to distribute assets equally among their children, some people devise plans that will never work in practice. A couple might, for example, want to leave the family vacation home to their three children without considering whether all of the children want the home or can cooperate in its use and care.
- **When is a Trust Necessary?** Many people don't think through the consequences of leaving money or property to someone outright. But a small inheritance can cause big problems for a person who receives disability payments. Or, someone who isn't financially responsible may spend their way through their parent's money in a short amount of time. By asking questions about the client's heirs, an estate planner can spot situations where a trust may be a good idea.
- **Disinherited children.** Many estate planners caution that disinheriting a child is an invitation to contest a will. To spare the remaining children the turmoil and expense, many professionals recommend leaving some money or property to the child, with a stipulation that the child will forfeit that inheritance if she contests the will.

- **Undue Influence and Competency.** Most estate planners are aware of these issues and know how to spot red flags. Among them are the child or caregiver who brings an elderly person in for a significant change to a will. Professionals should take care to establish that the testator, and not his or her family, is the client. They should also meet separately with the testator to make sure the person is competent and not under any duress or undue influence.
- **Family meetings.** Many people prepare wills and other estate planning documents and never discuss their assets or their estate plan with their children. The children may be shocked to find out their parents were deeply in debt or left the family home to Johnny when Jenny was the one who wanted it. This can lead to bitterness, resentment, and sometimes even litigation. Professionals can encourage a better outcome by urging their clients to discuss their estate plans with their children.
- **Choosing administrators and powers of attorney.** Many people think it's an honor to be named administrator or executor of an estate, but it's a difficult responsibility. Make sure your clients choose someone mature, responsible, and able to get along with other family members. Don't let them pick someone as a reward. The same goes for financial and healthcare powers of attorney. Encourage clients to think carefully about who is most honest, reliable, available, and willing to carry out their wishes.

Minor's Trusts

Another option to transfer money to a child is through a §2503(c) irrevocable minor's trust. The primary advantage of a minor's trust is that contributions qualify for the annual gift tax exclusion even though they are gifts of a future interest. Contributions will also be exempt from the generation-skipping transfer tax. Generally, only gifts of a present interest, where the child receives the gift immediately, qualify for the gift tax exclusion. However, contributions to trusts that conform to IRC §2503(c) rules qualify for the

If the grantor serves as trustee, then the trust may be included in the grantor's estate if the grantor should die before the child reaches 21. Therefore, neither the grantor nor a spouse should serve as sole trustee. However, they can serve as co-trustees. Trust assets will also be used to determine educational financial aid for

the child.

Final Thoughts

It all comes back to the fact that you just can't know how people will behave. If you have two children and make them co-executors, but one of them has financial problems, a strong personality, or a spouse that calls the shots in their family, you may be setting your children up for hurt feelings and arguments, a lifetime of resentments, or even a permanently shattered relationship.

If your family dynamics are complicated, as so many of ours are these days, it is even more important to make your wishes regarding inheritance known. There is a lot to consider. Is this your second marriage? How will your assets be distributed to your spouse's children from a previous marriage, to your children from multiple marriages? These issues can be difficult to discuss, even with your spouse. Don't neglect to have the discussion. An experienced estate attorney can help mediate these discussions and ensure that assets are distributed according to your wishes.

Work with trusted professionals to make these important family decisions. They can help you understand the role your executor plays, the skills they need, and any possible conflicts of interest that may impact their decision-making. If you don't have a family member who is a suitable executor, a corporate trustee with no financial or emotional attachment to your estate may be the best choice.

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