

Fair vs. Equal – Family Dynamics in Dividing an Estate

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Said Another Way . . .

*What are the psychological
and emotional constraints to
transferring family wealth?*

Fundamental Concepts

The best drafted estate plans are about *people*, not
assets

People are *not* reliably *rational* about money or
family

Wealth is *more* than just money

Passing family *values* is as important as passing
assets

Topics We'll Briefly Consider

- How much is enough for heirs
- When fair is not equal and equal is simply not fair
- Involving entire family in estate planning
- Timing of transfers
- Emotional issues in family business succession
- Special considerations for blended families
- Asset protection

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What is the Common Denominator for These Topics?

Stories!

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What is the Estate Planner's Responsibility with Respect to These Stories?

To listen

To discern

To honor the family's objectives, needs and fears

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Listening and Honoring Stories

- People are dying to share their narrative with an *active* listener.
- *Listening* will do more to satisfy clients than the best drafting.
- Clients have no idea what a competently planned or drafted trust looks like – and they don't care. They *accept* your competence as a given.

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Listening and Honoring Stories

- Clients want to feel *heard* and studied.
- When they feel that the drafter *listened* to *their* narrative, any estate plan will look better – and mean more business for the drafter who takes time to listen.
- When client's are heard, they are *more likely to adopt and execute* the estate plan.

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How Much is Enough?

Who is responsible for answering that question?

What do the clients' stories tell us?

Estate planner's typical response: the maximum amount that can pass tax-free

Estate planner's second typical response: the maximum amount that can pass tax-free plus an ILIT

Do our responses fit the clients' story?

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When Fair is not Equal and Equal is Simply Not Fair

Who is responsible for answering that question?

What do the clients' stories tell us?

What is fair?

Query: Do the grantors and their beneficiaries want the same thing from the estate?

Meeting needs *uniquely* is different from meeting those needs *equally*

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Does the Grantor Wear Rose Colored Glasses When He Looks at His Family?

Not seeing sons and daughters as they really are

Heirs' abilities to manage an estate and its distribution

Has your grantor taken time to study his intended executors and trustees and their integrity and relationships with other potential beneficiaries

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Query: Does the Grantor and his Beneficiaries Want the Same Thing from the Estate?

Different people see the value of an estate differently.

Some potential beneficiaries are prudent and will wisely benefit.

Some are resentful of an estate and will avoid it

Some are not able to use an inheritance wisely

Opportunity to use trusts to meet specific grantor objective and beneficiary needs

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Involving Entire Family in Estate Planning

Yes!

When?

Who?

Facilitated family meetings

Dialog!

Parents' attitude towards wealth the same as the children's'?

Remember, *grief* is no match for *greed*

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Use of Psychologist or Counselor

Consider involving a psychologist or counselor in family meetings as a facilitator.

Mental health professionals will understand and perceive a different set of factors than an attorney or accountant who plans and drafts estate documents.

Mental health professionals are *communicators* – skilled at *listening* as well as expressing both the client's thoughts – and the drafter's – in language both will understand.

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Timing of Transfers

Lifetime vs. testamentary

People avoid dealing honestly and accurately with their own deaths, their diminishing capacity and other's growing abilities

Clients' need for specific assets for life

Gift tax considerations

Is there a way to smooth the transition for both grantor and grantees

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Emotional Issues in Family Business Succession Planning

Owners' reluctance to "turn loose" – Does the grantor want to hold on until his or the businesses' final breath?

When to bring heirs into the business? – Would it be wiser to begin the transition early to preserve the business as a family asset?

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Emotional Issues in Family Business Succession Planning

Varying *abilities* and *desires* of potential beneficiaries

Distinguish among ownership, control, management, employment, income needs

These are *highly charged emotional* issues

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Special Considerations for Blended Families

An invitation to *disastrous* estate planning and *malpractice*

Special needs of various family members

Query: Does your grantor's son respect his step-mother?

Query: Does the step-mother respect her step-children?

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More on Blended Families

So much *litigation* that accompanies – and *poisons* – the passing of estates from one generation to the next are characterized by disputes among the various branches of a blended family.

Step-relatives fight with other step-relatives, cousins team up against cousins, and generations dispute with other generations.

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More on Blended Families

The *grantor may have a plan*, but unless he understands and accurately predicts the *potential disputes among the designated beneficiaries*, those beneficiaries will squander huge amounts in legal wrangling, and ignore the grantor's best intentions.

Planner's responsibility to help the grantor think through these issues.

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The Role of Philanthropy in Estate Planning

- Perpetuate family values
- Charitable vs. non-charitable purposes
- Tax vs. non-tax considerations
- Consider various alternative vehicles to meet non-charitable objectives
- Consider multiple vehicles to meet differing objectives

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Asset Protection

- Use of trusts to meet specific objectives
- Pre- and post-nuptial agreements
- Use of annuities for liability protection
- Use of life insurance to fund testamentary transfers or to pay transfer taxes
- Beneficiary designations on life insurance and retirement plans!

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Questions/Comments?



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