

A BUSINESS PERSPECTIVE

Think of family harmony as well as assets during estate planning

If forced to choose between preserving family harmony and maximizing the value of assets passing to their children under their estate plan, most business owners would not hesitate to opt for family harmony. Nonetheless, quite paradoxically, family harmony issues have traditionally been given little to no attention, not only in estate planning seminars, articles and textbooks, but also by most estate planning professionals.

Without much question, this inattention is one of the principal reasons for the very high incidence of family disharmony in the post-death administration of estates and revocable trusts. This is most unfortunate, for family disharmony in the estate planning process can cause severe emotional distress, endure for the lifetimes of family members, compromise the integrity of the estate plan, and significantly increase administrative costs. In a family business setting, it also often adversely affects business operations and business goodwill.

Probably foremost among family harmony problem areas is the fiduciary appointed to administer an estate or revocable trust following death. Naming that fiduciary is, quite rightly, solely the client's decision. However, there is typically little analysis or discussion in the estate planning process on the impact of this decision.

Although naming a child to serve as fiduciary is a natural tendency, in a multiple-child situation it has a very high

failure rate, probably resulting in significant family disharmony at least one-third of the time. The reasons are numerous, including



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IN HIS OWN WORDS

emotional volatility accompanying parental loss, sibling rivalry, in-law interference, family relations and financial interests compromising objectivity, and valuation disagreements in dividing assets (particularly common in a family business setting).

Administering an estate or revocable trust is not a "family matter." It is a legal, business and financial matter hindered, not fostered, by family dynamics. Naming an experienced third-party fiduciary, such as a certified public accountant or bank or trust company, at a normally relatively modest cost (perhaps 1-2 percent of an estate or trust), lends professional objectivity and competency, greatly reduces family disharmony risks and relieves a child of this often cumbersome and usually unappreciated burden.

Parents can place children in more limited beneficial administration roles that do not significantly increase family disharmony risks. Children active in a family business can be named "special trustees" to manage business operations. Children also may be given authority to discharge the third party fiduciary and name another third party as successor if they are dissatisfied with estate or trust administration or fees.

Another frequent post-death problem area for family businesses is providing for "active" and "passive" family

members. This situation probably has more than a 50 percent family disharmony failure rate, frequently resulting in intra-family litigation. If insufficient nonbusiness assets exist to fund shares for "passive" children, purchasing life insurance for equalization purposes or compelling "active" children receiving business assets to purchase the share of business assets that would otherwise pass to "passive" children should be strongly considered.

There are many other normally unaddressed problem areas. With regard to will and revocable trust provisions, these include: not clearly specifying the effect on post-death distributions of prior parental gifts and verbal or written loans; not specifying whether adjustments are to be made for property passing to a child through joint tenancy or under beneficiary designations; and not considering avoiding possible public, costly and fractious judicial resolutions of disputes by including mediation and binding arbitration provisions. Parents also frequently create family disharmony by improperly or inappropriately disclosing their estate plans to children.

Business owners who ensure their estate plans properly focus on family harmony issues will not only protect what is normally their most valued asset, they will maximize business efficiency and minimize administrative costs in the process.

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