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How to Keep Your Estate Plan From Tearing Your Family Apart

The Experts

It's often the stuff you haven't even thought of that can create the biggest divisions

BY JONATHAN I. SHENKMAN

AN ESTIMATED

\$105 trillion will pass from older Americans to their heirs by 2048. But too often, inheritances spark disputes over issues many families rarely consider in advance—such as caregiving, prior financial assistance and other family dynamics.

In my experience as a financial adviser, I've seen these issues create strife and divisions that can last a lifetime. So here are some steps for a thoughtful (and hopefully, litigation-free) execution of an inheritance plan.

Pay caregivers in real time

A child who spends years providing hands-on care to a parent (or both parents) often sacrifices income and career advancement in the process.

Rather than settling that account later through a larger inheritance, or leaving the caregiver bitter at an equal share, parents should establish a written caregiver contract with a set rate and a fixed schedule for payments.

The contract should be drafted with an elder-law attorney to avoid jeopardizing a parent's Medicaid eligibility or triggering any gift-tax issues.

Done this way, the caregiver is compensated in real time, not retroactively, and the eventual estate can then be split evenly. Maintaining clear communication, transparency and documenting the arrangement helps prevent misunderstandings and jealousy among siblings and ensures that the parents' wishes are honored.

Log each lifetime gift in a shared place

School tuition payments for children and grandchildren, down payments for home, and business loans made to one child years earlier are common sources of disputes among heirs. The amounts and dates of these gifts can become contested once a parent is gone.

The fix is mechanical: Record each gift, with the date and dollar figure, in a single spreadsheet or ledger within 30 days of the transfer. Decide up front, in writing, whether such gifts count as an advance against the inheritance or stand apart from it—and state your justification for either decision. Then apply that rule consistently for each child.

Consider account type and asset class

Two heirs can inherit equal gross amounts and walk away with very different net outcomes depending on which assets they receive.

For instance, a Roth IRA passes income tax-free. Traditional IRAs and 401(k)s don't. Also, under the Secure Act's 10-year rule, most nonspouse inheritors of a traditional IRA or 401(k) must empty the account within 10 years of the original owner's death. On top of that, if the original owner had started taking the required minimum distributions, the IRS also requires annual distributions in years one through nine, not just a single withdrawal in year 10. Note

While a Roth IRA must also be emptied by year 10, the beneficiary doesn't owe income tax on withdrawals as long as the Roth IRA has met the five-year holding requirement.

Assigning the Roth account to a child in a high tax bracket and the traditional account to one in a lower bracket can help equalize after-tax values.

Real estate can also get tricky. Inherited property benefits from a step-up in cost basis—meaning the heir owes capital-gains taxes only on the growth of the property's value starting on the time of the owner's death. This erases capital-gains taxes on decades of appreciation. But inherited real estate also brings property-tax obligations, maintenance and illiquidity that not every heir can manage.

So when giving different assets, consider the net value of that asset—not its face value.

Set structure, not just a dollar amount

Matching the structure of the inheritance to heirs' individual circumstances can be more valuable than equal treatment.

Pensions and annuities, for instance, can be the right inheritance for a child who struggles to hold on to money. They provide a fixed monthly check, rather than a lump sum that could lead to a single, irreversible bad financial decision. A risk-averse heir might also prefer a predictable amount each month over managing a portfolio.

Conversely, a child who handles money well and wants the flexibility to invest, start a business or buy a home is the better candidate for a lump sum.

A trust similarly lets parents give equal dollar values while applying different terms to each child: For instance, an outright distribution to one adult child, staged payouts to another, and built-in protections against creditors, divorce or addiction for a third.

Write down and discuss intent

Ultimately, one of the biggest predictors of postdeath conflict is whether inheritance decisions were explained before death. Parents should schedule a meeting, led by an estate attorney or family governance consultant for larger estates, to explain their estate plans to their heirs, revisiting the conversation as estate plans evolve. The conversation doesn't require disclosing dollar figures; it requires stating rationale.

Planning an explicit window for questions surfaces disagreements while parents can still respond to them directly, rather than leaving them to surface for the first time at a reading of the will. Writing a short letter of intent that states the reasoning behind gifts, caregiving recognition, business decisions and any other unique circumstances also helps heirs understand the logic and avoid conflict.

Jonathan I. Shenkmanis president and chief investment officer of ParkBridge Wealth Management. He can be reached at reports@wsj.com.

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