Balancing Your Estate for Harmony

Introduction and Overview

Herb Fineburg: Thank you for tuning in.

Reader's Dilemma: Balancing Inheritance

Herb Fineburg: I wanted to review with our group Danielle, Max, and myself, Herb a question that I read in an article recently, which dealt with sharing the wealth. The article reads as follows. I have two sons from my first marriage and a third son from a later relationship. The boys are very close.

I love them equally, and I want to create an estate plan that's fair to all of them. My current will divides my estate into three equal shares for each of the boys, but the mother of my two older sons is financially comfortable and they stand to receive a decent inheritance from her. My youngest son's mother is not well off.

He will probably receive little from her estate. Here's the question, should I revise my will to increase the amount that I leave my youngest son to balance out what the older boys will receive in total from their mother and me? I worry that my older sons will be hurt if I leave more to my youngest son and the letter is from dad.

What do you think, Danielle?

Danielle's Perspective: Assumptions and Fairness

Danielle Friedman: Oh, I have so many thoughts. You know, the old adage about assuming things I think this falls right into that category. One dad here is making a lot of assumptions. He's assuming that the older son's mother is gonna leave them a sizable inheritance. We don't know if mom is remarried.

Maybe she has stepkids that she's gonna leave money to. He's assuming that his youngest child may not receive much from his mother. I just think this is right for conflict.

Unless he leaves everything in equal shares to his children. Without doing that, you're just setting up a family to have conflict after you're gone.

Max's Advice: Equal Shares to Avoid Conflict

Herb Fineburg: Max, what could be the problem if you leave your estate equally to all three of your sons?

Max McCauley: I think that is the safest solution as Danielle said, to avoid future conflict among the children.

But I'm not unsympathetic to the reasoning of the father where he wants to account for either their current wealth, which is an issue we see at times or their future wealth, meaning how the three boys would inherit from mom, as well as from dad. But I think it's important for the father to solve the problems now, meaning leave it in three equal shares. And Danielle has some techniques that she can share about what happens if the boys don't actually need it or don't want the money. But I think if you kick the problem down the road through a variety of estate planning tools such as pot Trust, and again, Danielle will fill us in on that or otherwise you risk the children fighting or.

A trustee or the executor execut tricks being left with some very difficult decisions that would've been better off made by dad. So I think the best way to go is to split it three ways equally, and that tends to be our advice. But again, I'm not unsympathetic to the different levels of economic wealth.

Estate Planning Tools: Disclaimers and Pot Trusts

Danielle Friedman: And if the older children are of such means where they really don't need dad's inheritance and there are a couple different options. One dad could still leave them the money and they could disclaim their interests in the inheritance. And that means that within nine months of dad's death, they have the right to say, no, I don't want this.

And it will pass to the other beneficiaries. It really depends on what the estate planning documents say, but the children would likely get it. Or because the children are treated as predeceasing dad, maybe it would go to the grandchildren. We don't know.

Another option, like Max alluded to, is leave it in a pot trust. And a pot trust is really, rather than having three separate shares for the kids, everything would be commingled into one pot for all three children. And then if one child has more needs than the other child more resources can be expended for the child with greater needs. I think that defers the decision that dad should be making and puts the decision in the hands of a trustee and makes their life more difficult and complex. I don't know anyone who really likes administering pot trusts because you really have to make value judgements.

Herb Fineburg: Does that create, in my mind, that sort of creates an issue between the children?

Danielle Friedman: Yeah.

Herb Fineburg: Will they all be applying for money from the trustee for their particular needs and one's needs might be more foundational, like, shelter, rent. Another one might be I need a new car, or we want to, fix up our house or something like that. So the pot trust sounds like it creates tension between the children and the parent has said, not my problem. I'm gonna make it your problem. But in the end, parents really want their kids to get along once they left this earth and those are great relationships between siblings.

Danielle Friedman: Yeah. We always tell our clients that the most valuable thing that you're doing with your estate plan is leaving family harmony and ensuring that everyone gets along or hoping that everyone gets along, at least setting them up for success to do so. And by creating a pot trust you aren't setting them up for success.

You may be adding fuel to the fire.

Max McCauley: I would say you will have family disharmony. If you don't treat them equally, they're not going to get along. I've seen children fight over very small sums of money whenever it was put at issue.

Herb Fineburg: Could I throw some facts to you guys that are a little bit different than the potential for somebody having a premonition that his ex-wife is gonna leave his sons a lot of money, which he doesn't even know. Right. That's really something that's, nobody should be making their estate plan based upon facts that are purely made up.

Max McCauley: Beyond their control

Herb Fineburg: and beyond their control.

Real-Life Scenarios: Wealth Disparities Among Children

Herb Fineburg: But let's take the situation which often comes up similar to this particular, question that this dad brought up is what happens when I have children who have different personal wealth? Let's use the example, which is often brought up. I have three children. One's a teacher and doesn't make a lot of money. One's a doctor and is very comfortable, and one is a private equity venture capitalist who has untold sums of money.

The parents don't know how much money he has. It's just remarkable sums of money. How do you divide your estate plan in that situation? What would you do, Danielle if you had that situation?

Danielle Friedman: I would still leave it equally and one rely on my children to disclaim if they really didn't need the money.

I've also seen some families solve that problem by saying, okay. I am gonna skip over the ultrawealthy child, but I'm not gonna leave their share to my other children. I'm gonna leave their share to my grandchildren, to the children of the ultra wealthy child.

And that way they're still benefiting each line of the family equally, but not necessarily enriching the person who doesn't need the money.

Herb Fineburg: In your plan, you would, leave it upon the child who is in private equity, who has untold wealth to disclaim all or part of his share so that share goes to the teacher and to the doctor civilly. How does that work when they disclaim it?

Danielle Friedman: With a disclaimer, the beneficiary cannot have taken possession of the inheritance, and instead they have nine months. To notify

Herb Fineburg: nine months from what,

Danielle Friedman: from the date of death, to notify typically the executor of the estate or whoever is in charge of the funds that they don't want it.

And it's really a written, piece of paper. You probably cite the state's disclaimer statute. Every state has one saying, I disclaim my right to this inheritance, and then you are treated as predeceasing the decedent.. So in this example, if the disclaiment had children and the inheritance was left to them on a per sturpital basis, meaning if the beneficiary dies, it goes to their heirs, then it would pass to the grandchildren, may not pass to the other siblings.

Awesome. I see. But. The grandchildren could also disclaim and then potentially could end up with the siblings, or it just ends up with the grandchildren, which isn't that terrible of a result.

Practical Solutions: Trusts and Equal Shares

Danielle Friedman: And the examples I'm describing are really, if you're leaving assets outright to people, which we all know, we prefer to use trusts.

The trust can also just hold the inheritance for that wealthy child and never make distributions to the wealthy child. So even though you've left them the money, it's not really being used and it's being accumulated for the benefit of future generation, the family.

Max McCauley: So in that scenario, Danielle, if the wealthy child didn't use the money and it was held in trust, would the money then be for the benefit down the bloodline for the lineal descendants of that wealthy child.

Danielle Friedman: That's typical, but, and the trust can say whatever the client wants, so that if the client knows that they have a wealthy child, they could say that, if the wealthy child disclaims his or her share goes to the siblings, it doesn't have to go to the children of the wealthy child.

It's really customizable. But yeah, that, that's one solution. I think, we talked about. Again, the pot trust scenario, I just think it creates a mess. I'm not a fan of it. I have clients who insist upon it, but to me it makes trustee decision make and more difficult than it already is.

Herb Fineburg: A pot trust, if, as I understand it, is instead of dividing up the estate into three equal shares and setting up three trust shares, you would have one trust pot that has everybody is a beneficiary. And then it would be up to the trustee to decide who gets the money as opposed to the deceased parents providing for it in his will.

Danielle Friedman: Yeah. So if we have, let's say $3 million and three children. Setting up separate shares and mean that each child would get $1 million into his or her share, and what the trustee does with that share does not at all impact the other children's trust shares. With a pot trust, all 3 million would go into one account for simplicity's sake by way of example.

And all three children would share in that 3 million. So if one child had extraordinary educational expenses because they were going to medical school and so on, and they needed, hundreds of thousands of dollars for their educational expenses. The trustee could make that distribution and pay those expenses, but it would almost be to the detriment of the other trust beneficiaries because there's only one pool of money,

Herb Fineburg: Max, so if you had a client who came to you and she said, I have really three kind of assets. I have a house at the Jersey Shore. I have a house that I live in Pennsylvania, and I have my bank accounts and I want to give. One house to one child, another house to another child in my bank accounts to the third child.

What would you tell that person to do?

Max McCauley: I would discourage that approach. Again, I like the approach of three equal shares because the brokerage account is likely to fluctuate in value, and both homes will fluctuate in value. Although the intent is there because maybe one child needs the money and another child would like the house and the third child would want the other house.

I think that if you left it in three equal shares and once,

Herb Fineburg: so all assets, they get a one third interest in all three assets.

Max McCauley: That's correct. But I think that what will likely happen then is the executor. Executor will. Look at the assets, marshal the assets, and the children are gonna need to decide.

Do they want money or they want the house. And if they want the house, then the one child's gonna buy out the other two children to get the house based off of an appraisal of the house. And the same with the cash. Yeah, cash is easier to split three ways, but the homes aren't. I think that allows the children then later to see the overall value and make a determination.

Do they want the home or would they like all the assets to be sold so that they can get money?

Herb Fineburg: Good point. You could make, all the houses could be sold and they would all just split the cash

Max McCauley: That way the decedent doesn't have to worry about. Did they leave three equal shares, which is inevitable, not going to be possible if we're talking about real estate in different locations as well as a brokerage account,

Danielle Friedman: and that kind of goes into another topic for a different day.

But you know, leaving a vacation home to multiple beneficiaries is always the ends up being a disaster because inevitably one beneficiary uses it more than the other, but they're all sharing and carrying costs and it inevitably leads to conflict. This way, everything is sold, the house is sold. You wanna beach house, go buy a beach house with your share.

Herb Fineburg: Or you could buy the beach

Danielle Friedman: house. Or buy the beach house from your siblings.

Herb Fineburg: From your siblings, yeah.

Danielle Friedman: But that way you're not, leaving, you're not leaving a fight for the family, because that's really what all of these examples boil down to is, how can you reduce friction among the beneficiaries after you're gone?.

Herb Fineburg: So Max, what you always tell me is you can't make a mistake by treating them all equally. That sounds like a pretty good theme.

Max McCauley: That's the safest approach. And it's also, I think the parents or the decedent needs to take some ownership of resolving that issue. With the pot trust suggestion I think that you're punting that fight to the trustee and the trustee might not even understand what they're gonna be involved in. And I do think it's gonna lead to disharmony among the three children. So the three equal shares is the safest way to preserve family harmony.

One question for you, Danielle. You had mentioned that we prefer the assets be distributed or held in trust for the children or grandchildren and not distributed outright. Can you explain why?

Danielle Friedman: Well, that really does a lot of things for the family. One, it protects the assets from the claims of the beneficiaries, creditors divorcing spouses, plaintiffs, anyone you can think of.

The assets are protected as long as the trust isn't placed for the beneficiaries lifetime. It also guarantees that the assets are going to go to whomever the parent wants them to go to after the original beneficiary is deceased. So if parent creates a trust for the benefit of children, and then it says that when my kids pass away, the trust assets continue for my grandchildren and grand great-grandchildren and so on.

The beneficiaries other than disclaiming their rights into in the trust, they, they can't really do a whole lot to change the provisions of that and change who the beneficiaries of the trust are.

Herb Fineburg: So that's preserving the assets for grandchildren. And if one of the children don't have any grandchildren, they wouldn't leave it to their partner, it would go to the other children.

So you really benefiting your children entirely with your estate, which is what you should be allowed to do with your estate as you wish.

Danielle Friedman: Absolutely.

Max McCauley: So it enables the parents to ensure their wealth is transferred down their bloodline.

Stepchildren and Estate Planning

Max McCauley: I will say a planning point that we've mentioned in the prior podcasts is that all individuals should look at their estate plan at least every five years.

And this comes up, especially in the stepchildren context. When they made the plan, they might have decided they don't want any money to go to the stepchild, and five years later they might have changed their mind. And we've seen that before as well, where. It wasn't five years, it was 15 years later. And then provisions were made to change the state plan to include the stepchild as the parent got to know the stepchild better.

So again, planning point. Look at your documents every five years, talk to your counsel and make sure that they actually reflect your then current wishes.

Conclusion and Final Thoughts

Herb Fineburg: These are all very heavy topics that require a considerable amount of discretion and, decision making. What we try to add for people, I guess, is our experience in dealing with different couples and seeing how assets are used after people pass along, which our clients won't see because we see this over and over again every single day.

So we have some experience in how to formulate an estate plan. This has been a great topic and we'll have to come up with another topic for our next podcast. What do you think?

Danielle Friedman: Sounds like we have a couple ideas that, that are brewing.

Max McCauley: Very good. Yes. I have at least one, but I'll save it for the

Herb Fineburg: next.

Okay, great. Great.