



Helping Clients Deal with Some of the Emotional and Psychological Issues of Estate Planning

By Robert Solomon

In designing an estate plan, clients must sort through a number of emotional and psychological issues, ranging from treatment of children—does being fair mean treating children equally?—to problems of communication.

If parents decide to divide their estate unequally, significant family disunity can occur. Families can avoid these disruptions by discussing the relevant issues before the parents' deaths. Not all parents feel comfortable having these conversations, however. To avoid future family conflict, it is important for the estate planner to recommend that families openly discuss these issues in the context of a family meeting. Often it is possible for families to get together successfully themselves, but when tension, conflict, or anxiety is anticipated, the estate planner should recommend the use of a facilitator to guide these meetings. A good facilitator can significantly enhance the chances of a successful family meeting.

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This article presents examples of parents dividing their estates unequally. It discusses how estate planners can best help their clients confront the issue of fairness versus equality and the ways estate planners can best counsel clients who are resistant to the idea of discussing the plan with their children. Finally, the ideal qualifications needed in a facilitator, the ingredients that lead to a successful meeting, and the way a facilitator should organize and carry out a family meeting are reviewed.

Equity vs. Equality

The following are four case scenarios in which parents mindfully chose to distribute their assets unequally.

The first scenario involves two brothers who are middle aged, devoted family men, and passionately involved in their careers. The older brother is a high school history teacher earning \$50,000 per year. The younger brother is an investment banker earning \$1.5 million per year. In raising their sons, both parents emphasized the importance of finding meaningful work. The parents are delighted that both their sons have found satisfying careers but feel their older son should not be penalized for having a significant-

ly lower income. Therefore, they plan to leave three-quarters of their estate to their older son and one-quarter to their younger son.

The second scenario involves three brothers, the oldest an electrical engineer, the second oldest a highly regarded academic physicist, and the youngest a sales clerk. The two older brothers are well-adjusted, middle aged men who are devoted husbands and fathers. Their 30-year-old younger brother has struggled all his life with a pervasive developmental disorder, which has left him severely socially and learning compromised. Despite all his hard work, he struggles to keep jobs. The parents admire their youngest son's courage and tenacity and agree he has far greater financial needs than his brothers. Thus, the parents' plan is to give two-thirds of their estate to their youngest son and one-sixth to each of their older sons.

The third scenario involves a blended family. The mother and father have two children. In addition, the mother has a 32-year-old son named John from a previous marriage. The father is a successful attorney who has an excellent relationship with all his children, including his stepson. The stepson is the only child of a cardiac surgeon. Because John stands to inherit from his birth father, the mother and father decide to give 10% to John and 45% to each of their other children.

The fourth scenario involves an uncle who has never married and is quite well off. He has two nephews and a niece. The two nephews are unmarried and the niece is married and has two sons. The uncle feels close to his niece, nephews, and great nephews and thus it is important to him to leave money to all of them. Therefore, the uncle decides to leave one-third of his estate to each nephew, one-sixth to his niece, and one-twelfth to each of his great nephews.

What do these four scenarios have in common? Each plan was based on what was important and meaningful to the parents and ultimately the

families involved. Estate planners can achieve this outcome by helping their clients understand their values and goals. Then the planner can show the parents how to reflect them in their estate plan. Jon and Eileen Gallo nicely bring this point out in their book *Silver Spoon Kids*. Eileen Gallo, Jon J. Gallo & Kevin J. Gallo, *Silver Spoon Kids* (2001). In the book Mr. Gallo states that, when he meets with a client, he does not simply talk about tax savings but instead focuses the discussion on the clients' values and goals. Centering on these concepts is the key ingredient that enables parents to clarify the relevant issues involved in being fair versus equal. In addition, a plan based on values and goals can be accepted much more easily and possibly respected by children as opposed to one perceived as either arbitrary or

but are leaving open the possibility of modifying their initial ideas.

But what can an estate planner do when his or her client either resists or outright rejects the idea of a family meeting? First, the estate planner should check that the client clearly understands what is suggested. Sometimes a simple misunderstanding can explain the resistance. Next, the estate planner should not try to pressure the client to have the meeting. This strategy simply creates more resistance. A more helpful strategy is to neutrally join the client in looking at the issues, knowing the decision to have a family meeting resides with the client. This approach takes the pressure off the client, thus reducing resistance. The attorney then wants to empathize with his clients by understanding their experience.

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spiteful. This approach will clarify not only the issue of fairness versus equality but will also transcend the negative feelings and conflict that often emerge when people feel they are treated unequally.

The Importance of Talking about the Estate Plan

When parents are thinking about dividing their estates unequally, they should talk about their ideas with their children. Numerous cases of significant family conflict and animosity have resulted from parents not discussing these issues with their children before their deaths. Estate planners need to recommend these discussions and parents should be open to their children's reaction and feedback during these meetings. In this way, the parents are not just telling their children what the plan is

Ideally, the estate planner should be curious as to why the resistance is present. There may be several possibilities. Clients may feel uneasy discussing money with their children. Sometimes they are afraid their children will lose motivation if they know how much money they will receive. Sometimes they are afraid their children will feel differently about them if they know the specifics of their estate plan. Estate planners want to have all these possibilities in mind as they explore their clients' concerns. Attorneys should ask directly what their clients' concerns are and address each concern in an empathic, supportive manner, emphasizing that such concerns are normal. The attorney may share experiences with clients who have had similar concerns but nevertheless chose to discuss these issues

with their children. The attorney should discuss the pitfalls of not having a family meeting. He might mention that these discussions often lead to further closeness and cohesiveness within families. Despite the attorney's best efforts, if clients still refuse to discuss the plan with their children, the attorney should back away and state that he or she is only making this recommendation out of concern.

by the children as being a representative of the parents. A good choice might be a mental health professional.

When an estate planner makes a referral to a facilitator, how might the facilitator go about approaching and carrying out a family meeting? First, he or she creates an atmosphere that maximizes the potential for success. Ideally, the meeting should be at a neutral site. Thus, the parents' home

be but rather is for a discussion of all relevant issues.

The facilitator should take several steps to create such an atmosphere. First, several days before the meeting, the parents might want to distribute a written summary of their initial thoughts concerning their estate plan, the amount of money involved, the investment profile, and the amount likely available at their deaths. A written summary is advisable because it gives the children time before the meeting to digest the information, assess how they feel about the plan, and formulate what they would like to say during the meeting. Before distributing this information, parents should make clear to their children that this information is confidential and under no condition should be shared with anyone outside of the family. Some parents feel uncomfortable revealing this information in written form before the meeting. If so, a summary can be distributed at the meeting.

The next step is for the facilitator to talk with all family members individually before the meeting. Talking in person is preferable, but talking on the telephone is acceptable if people live out of town. In these individual meetings, the facilitator should ask each family member how the member feels about the family meeting and what the member's goals and concerns are. Any anxiety needs to be addressed and hopefully diffused. The facilitator should review the importance of open communication in the family meeting and that individuals are free to bring up anything deemed important. In the process of these individual meetings, rapport will be built, and each family member will gain confidence in the facilitator as someone objective, trustworthy, and able to handle any conflict that may arise in the family meeting.

The family meeting itself should start with the facilitator explaining his or her role, reviewing confidentiality, and stating the purpose of the meeting. The facilitator should make clear that he or she is not acting as an

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Again, the decision to have the meeting resides solely with the parents.

Using a Facilitator

When parents are considering dividing their estate unequally, often it is possible for families to successfully discuss the relevant issues on their own. But when tension, conflict, or anxiety is expected, the estate planner should recommend the use of a facilitator to guide the meeting, because a good facilitator can significantly enhance the chances of a successful family meeting. What are the ideal qualifications of facilitators? They should have outstanding interpersonal skills. They should have a calm, confident demeanor, exuding a sense of integrity, fairness, and trust, and should be perceived by all family members as neutral, objective, and fair. They should have an excellent understanding of group dynamics and experience in facilitating groups. In addition, they should be well-versed in estate planning and the intergenerational dynamics of wealth transfer. The parents' estate planner would be a poor choice for facilitator because he or she might be perceived

or the estate planner's office is not the best place. A resort or hotel is a better possibility. The meeting might take place during a retreat at which family members can be together in a casual way. This setting is likely to create a more relaxed atmosphere, which is a key ingredient for a successful meeting. The meeting should take place with the facilitator and the family only. It needs to be clear that the facilitator is working for the family and thus is functioning independently of the estate planner. There should be no distractions during the meeting. Thus, pagers and cell phones should be turned off and no telephone calls should be received or made during the meeting. Everyone should feel comfortable bringing up anything he or she considers important. People should trust that what is talked about stays within the family. All should feel their views are welcomed and will be heard by all. People should feel confident that the facilitator will not allow conflict to get out of hand but rather will promote resolution. Family members should feel that the meeting is not for the parents to proclaim what the plan will

arbitrator and thus has no decision-making power. The facilitator should emphasize that conflict is normal and can be resolved. The facilitator should then go around the room in no particular order asking how people are feeling, what their thoughts are about the meeting, and if they have any particular agenda. This intervention again reinforces the idea that anything can be talked about and anything talked about will be listened to. The facilitator then should say to the children that this is their opportunity to give feedback to their parents and to state their hopes and desires. The facilitator repeats that the final decision on all matters resides with the parents. Parents are often reassured to hear that they have the final say. The facilitator then asks the children to respond to their parents' tentative plan, giving their feedback, both positive and negative, while stating any changes they would like to see. After the children have spoken, the facilitator then asks

the parents to respond. From here, hopefully a spontaneous, honest, open discussion will ensue with the facilitator intervening only as needed to make sure everyone is heard. The facilitator accomplishes this goal by urging the more vocal family members to hold back so that the quieter participants have a chance to speak. The facilitator may have to stop the meeting to ask family members if they have heard what was just said. The facilitator may occasionally make suggestions, but he or she makes clear to the family that these are only suggestions. Afterwards, the facilitator should ask for any final thoughts. Then the facilitator should inquire if anyone feels another meeting is needed. The facilitator should then summarize his or her understanding of what took place during the meeting and what the family has agreed to. If everyone agrees with the summary, the facilitator, if appropriate, should make a comment praising family members for their

fine work. After any responses from the family, the facilitator adjourns the meeting. The facilitator then prepares a written report that he or she distributes to the family.

Conclusion

In summary, confronting the issue of being fair versus equal can be extremely challenging for parents planning their estates. Estate planners can provide valuable assistance in this area by focusing conversations around clients' values and goals. The importance of having family discussions of estate plans, especially when children are not being treated equally, cannot be stressed too much. When tension, anxiety, or conflict can be anticipated, the estate planner should recommend the use of a facilitator to guide these meetings. A qualified facilitator can be an invaluable resource in creating the conditions that will maximize the success of a family meeting. ■