

Your Estate Planning . . . Should the Kids Be Involved?

Parents often ask if their children should be informed of or involved in their parents' estate planning. The answer depends entirely on family dynamics and the choices made in the estate planning process.

Some estate planning is by nature a family affair. Family limited partnerships, for example, often involve business owners passing partnership interests to their children over a period of years and thereby reducing the size of the parents' taxable estate. Another form of estate planning developed around children's participation is an irrevocable life insurance trust. With this setup, a parent can exclude proceeds from a life insurance policy from the parent's taxable estate, provided the children choose not to withdraw trust funds used for paying the insurance premiums every year.

More often, though, clients are engaged in more traditional forms of estate planning, for instance a will or living trust. The client wants to know if their children should be made aware of the estate planning, whether the children should have a copy of the estate plan, and whether the children should be involved in developing the estate plan.

If your children are adults, it rarely makes sense to withhold from them that you have an estate plan in place. In view of the benefits of having an estate plan, I often encourage adult children to ask their parents if they have completed any estate planning, without necessarily getting into any of the details. It is the children, after all, that usually take an active role after the death of one parent, and are fully in charge upon the death of the second parent. It's entirely reasonable for the children to want to know if any planning has been completed.

Furthermore, it is important that children be made aware of a parent's power of attorney for health care, and that children have a general understanding of the situations in which a parent does not want to be kept alive. These are difficult discussions no doubt, but your estate planning attorney should have tools to help you initiate such talks with family members. The difficult and painful situations that arise absent such discussions are too often played out after a crisis has occurred.

Whether children should have a copy of your estate plan will depend far more on your unique family situation and what estate planning choices you have made. If you are leaving money or assets unequally to your children, you may choose to include a letter explaining your reasoning with the estate plan, but not distribute the plan or the letter until after your death. Many parents want their children to have a copy regardless of what planning choices the parent has made; others think distributing it will only open a can of worms. In making a decision, consider whether your executor or trustee would benefit from the opportunity to review the document and discuss them with you so that they are better informed as to your primary intentions. This is particularly relevant where one child will be carrying out instructions that affect his or her siblings regarding your estate planning choices.

Whether an adult child should take part in creating the design of the estate plan is a thornier issue. If including the child or children is initiated by the parent, the process can run smoothly provided the children understand that the parent is the attorney's client. Additionally, there will be times when the attorney will ask the children to leave the room to ensure the parent can tell the attorney what information should or should not be discussed with the children present, and to address whether any conflicts of interest exist between the parent and the children. Where including the children is initiated by a child, the attorney's concerns will be heightened. If

there is any indication the child is attempting to manage the process and will not relent, the attorney may decline to represent the parent.

There are no hard and fast rules on whether your children should be aware of or involved in the design aspects of your estate plan. Discussing the matter and your concerns with your attorney will allow you to make the best decisions for your particular family situation.

Adam Bartsch, *Your Estate Planning . . . Should the Kids Be Involved?*, The Shelburne News, October 5, 2006.

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