Fair Versus Equal – What's the Legacy You Want to Leave to Your Children?

If parents are asked how they intend to leave their assets to their children when they are gone, most will probably say equally. For those who have already prepared Last Wills and Testaments ("Wills") a provision to do just that is probably already included. Even without a Will, the intestacy laws in most states would generally divide the estate equally among the children.

If you're among those parents, ask yourself this: "Today, do I treat my children equally, at all times, from a financial standpoint?" The answer is probably no, you don't. So, why do you have to do that when you're gone?
We're not talking about leaving specific items like jewelry, artwork or other items that may have emotional or sentimental value, to specific children, but rather financial assets like cash or other property that can easily be converted to cash.

Each child has different needs. As they're growing up, they may have different interests or hobbies, or they may require different levels of educational assistance or other types of support. For instance, one child may love outdoor sports and play on travel teams, which can get very expensive, while another may be content to stay home with video games. One child may have physical or psychological illnesses or disabilities that require additional medical, rehabilitative, educational, or other care expenses, while the other is healthy. One child may go to a public college or university while another may go to an expensive private school or skip higher education completely. One may decide to go into a low-paying public sector job, while another may have a very lucrative career. Each example requires a different level of financial assistance.

Regardless of the financial situation that your child finds themself in, if needed, you're probably going to do your best to help as much as possible. So, spending a certain amount of money on one child's needs doesn't automatically mean that you will spend an equal amount on another's needs, right? If that's true while you're alive, why does it have to be that way when you're gone?

Often, leaving an estate in equal shares to your children seems like the fairest solution so as not to create dissension among the children, and having any of them think that one child is favored over the other. But that really may not be the fairest nor make the most sense for your family's situation. No doubt, it is the easiest course of action to take, but there are other easy solutions to be more equitable.

The first possibility is not to divide up your estate equally and make outright distributions to your children when you're gone. Rather, leave all your assets in a trust and provide the trustee of that trust with the discretion to make equal or unequal distributions depending upon each child's circumstances at the time of need. That would simulate what you would have done during your lifetime. This trust is often known as a "pot trust."

Another possibility is to intentionally divide your estate unequally because you know that your children are on different paths in life and in very different financial circumstances. For instance, one child may have chosen a life of public service which typically isn't paid as well as the private sector, while another strikes it rich as an entrepreneur, corporate executive, professional or other highly paid individual.

A third option may be to divide your assets evenly but use life insurance proceeds as a way to provide greater financial assistance to an adult child who you know may need more. That can be as easy as naming the child (assuming they are an adult) as a beneficiary of the policy or leaving the insurance to a trust of which your child is a beneficiary.

If you have a child who suffers from a physical or psychological illness or disability, and qualifies for some level of public assistance, then certainly, you do not want to divide up your estate equally. To do so may disqualify the child from public assistance. Instead, you should be consulting with an attorney specializing in "special needs" planning to ensure that your child receives all the financial assistance they need without jeopardizing the government benefits. Oftentimes, irrevocable trusts known as "special needs trusts" or "supplemental needs trusts" are created and funded with life insurance to provide the pool of money needed when you're no longer here to help your child, while still remaining eligible for government assistance.

Above all, regardless of which decision you make, you should communicate your intentions and desires to your children when they are old enough to understand. Families rarely do this, leading to conflicts and family disharmony due to ignorance of the parents' intentions and thought processes and misunderstandings.

Have a family meeting. Sit down with your children and explain why your estate plan is designed the way it is. Explain that they may not have the same needs, and that you want to help the one who needs the most assistance without your children having to regret their life choices. Explain that this is not about favoring one child over another. Rather, it is about fairness, equity, support, and love for all. This way, they will fully appreciate the circumstances and minimize any feelings of ill-will or perceptions of favoritism.

Conclusion

When you speak with your estate planning attorney, don't automatically assume that leaving your estate in equal shares to each of your children is the best and most effective outcome. Consider the needs of your children and the path they have chosen for themselves which may impact their finances. Work with an experienced financial professional such as your Security Mutual Life insurance advisor to get the process started.

For More Information Contact:

Your advisor will assemble your team and coordinate with your attorney and tax professional to review your situation and to determine which plan is appropriate for you and your family.

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P.O. BOX 1625 • BINGHAMTON, NY 13902-1625
607-723-3551 • www.smlny.com

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