
AVOID THE FAMILY FEUD AFTER YOU'RE GONE: GUIDE YOUR SUCCESSOR TRUSTEE BY SMART PLANNING

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As you sit at the Thanksgiving table with your “Leave It to Beaver” family this year, can you possibly imagine those smiling faces engaged in an ugly and expensive battle over your estate when you are gone. Unfortunately, that will be the case in many families. Over the years, we have worked on too many estates after the fact where, because of a lack of clarity by the parents today, family serenity and love become a distant memory upon the parents’ death.

You’ve designated your oldest child, most educated child, or two of your children to act as your Successor Trustee after you are gone, and your estate planning attorney drafted extensive boilerplate language to guide them through a smooth trust administration. Nothing could fracture your close-knit family, especially when splitting up your estate. You assume that one of your children will end up with the family homestead and that everyone will continue those family Thanksgiving dinners even after you’re gone. Wrong!

Pitfalls can occur where your estate planning documents do not address the realities of your specific estate, but simply provide boilerplate provisions that legally give parameters for your Successor Trustee to follow. Have you really considered how specific real estate is to be distributed from your estate and does your Trust address this? Common issues that arise during the administration of a trust are where certain beneficiaries want the same parcel, don’t want certain properties, can’t afford certain properties, or don’t want to be on title with another sibling. To avoid sibling rivalries, hurt feelings, or lasting hostilities between siblings that require a Court’s intervention to resolve impasses during trust administration, individuals should analyze whether standard provisions in a Family Trust address the parents’ intentions as to the ultimate distribution of assets. Greater forethought will help to avoid potential Court

involvement, eliminate the unnecessary expenditure of attorneys' fees, reduce conflicts, and avoid protracted delays in concluding the trust administration.

Failing To Identify Who Is to Receive Specific Real Estate.

Frequently, parents have a home, a vacation cabin, or an undeveloped parcel, and assume that one of their children will want to inherit it. But little thought may be given to whether this assumption will be carried out by the Successor Trustee. Although wide latitude may be given to the Successor Trustee by law or by specific language in the Trust to decide how trust assets should be distributed, the parents spend little time discussing with their Estate Planning Attorney what they hope will occur by their Successor Trustee's decisions. Many clients simply don't concern themselves with whether certain assets should be liquidated or whether a mechanism should be specified to carry out their wishes.

By the parents failing to think through certain scenarios and giving directions with explanations to the Successor Trustee, beneficiaries might question the approach the Successor Trustee takes, especially if the Successor Trustee wants to eventually take title to an asset from the Trust Estate. Beneficiaries other than the Successor Trustee might also want an interest in a piece of property, which puts the Successor Trustee in an awkward position as to how a Trust asset should be distributed. Beneficiaries may claim that the Successor Trustee is "self-dealing," which can lead to a court determination of a breach of fiduciary duty by the Successor Trustee to other beneficiaries. It may be prudent for the parents to talk to their children about their real estate, and explain that they intend to provide certain beneficiaries a first right of refusal to certain parcels. If the parents then explain their decisions in the Trust document itself, the Successor Trustee will have further guidance on distributing assets should a disagreement arise.

Failing to Address How the Successor Trustee is to Arrive at a Parcel's Selling Price.

Disputes commonly arise when one beneficiary believes an appraised value does not reflect the fair market value of a family parcel, and demands that the property be listed with a real estate agent to achieve the best price possible. If the parents fail to adequately address in their Trust how the Successor Trustee can arrive at a selling price for a parcel, disgruntled beneficiaries may seek court intervention to stop a sale or force a Successor Trustee to spend trust assets

unnecessarily to have a Court review and approve the sales price. A conflict of interest may easily arise where the Successor Trustee wants to buy a family home to keep the asset in the family but other beneficiaries assert that the selling price is too low. To avoid a claim of “self-dealing,” the Successor Trustee may feel compelled to list the parcel with an agent and either sell it to a third party, or outbid the best offer received (which can result in bad feelings between siblings).

Parents can easily clarify whether certain assets are to be liquidated and the proceeds split or, assuming an asset is to be kept in the family, specify how to determine the value and whether any beneficiary has an option or first right of refusal to acquire the parcel from the estate. With clarity, the Successor Trustee may avoid Court involvement to settle a dispute, as well as family disputes that continue long after an estate is settled. If parents had realized that their Successor Trustee would ultimately be compelled to sell a parcel to someone outside the family (because of dissention between their children or otherwise), they might well have included a valuation procedure in their Trust to avoid such a result.

Do You Really Want Two Siblings To Be Successor Co-Trustees?

Many parents do not want to cause conflicts or hurt feelings between their children, and feel that designating two of their children to act as Co-Trustees will result in fewer problems during trust administration. What parents sometimes fail to understand is that if the Co-Successor Trustees fail to agree on a procedure, an impasse results that may have to be resolved by Court intervention. If the parents do not want to choose one child to be the Successor Trustee because it might hurt another child’s feelings, the parents should specify a means that will resolve an impasse short of Court intervention. Suggestions by your Estate Planning Attorney can avoid needless disputes between Successor Co-Trustees and lead to a smooth trust administration. If the parents fail to address this issue, substantial court expense and long-term sibling feuds may result. Certain siblings may infer that their parents never intended that the Successor Trustee could choose who should take title to a parcel and at what price the property would be sold, and petition the probate court to question whether the Successor Trustee’s fiduciary duty to all beneficiaries is being carried out.

Conclusion.

Look around the Thanksgiving Table this year and make a realistic conclusion whether there is a chance your children might disagree on matters affecting your trust administration. Remember that your Successor Trustee walks a fine line when distributing certain assets where the beneficiaries are not unanimous on how property should be divided. Consider a path for your Successor Trustee to follow in distributing real estate that may avoid family disputes for future generations, and address this specifically in your Trust. Also, seriously consider specific direction on how your Successor Trustee is to distribute specific property, or provide a mechanism in your Estate Planning documents if your intent is to keep property in the family. A minor revision to your existing estate planning documents might just avoid the family feud that could have been handled by more thoughtful direction.

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