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Estate Planning in the "Modern Family" Era

By Carole B. Sheffield

The meaning of "family" has undergone some radical changes in recent years, and now encompasses same-sex couples (married to each other or not), blended families, single mothers, and even children conceived and born after the death of their biological father. Other nontraditional family profiles that have developed include multigenerational families (three or more generations); over-40, first-time parents; and "boomerang" families — parents with at least one child aged 21 or over who has returned home to live. As the concept of family evolves, family dynamics evolve in estate planning, too.

Estate Planning Profiles: Traditional vs. Nontraditional

On TV, family sit-coms were introduced to embody the middle-class "traditional family." In the 1950s and 1960s, "Leave it to Beaver" and "Father Knows Best" epitomized the patriarchal, traditional family where both parents were first-time married heterosexuals raising at least one child of their own in their home. The family dynamics within the traditional family were depicted as strong parents guiding their naïve children through any storm with sensitivity and humor.

"Modern Family," which first aired in 2009, thrives today based on the interactions among three families: (1) a blended family, with a husband and wife both in their second marriage with one child, plus children from both prior marriages; (2) same-sex parents with an adopted child; and (3) a traditional family, all connected through one father. The same rivalries and jealousies of traditional families are found within each of the component families.

Trends in Estate Planning

In the past, estate planning sought to strike the appropriate balance between the couple's intention to distribute their estates within the family, and the couple's desire to minimize taxes under federal and state tax laws. Now that the federal estate exemption amount has increased from $600,000 in 1990 to $5,430,000 in 2015, in many estates avoidance of estate taxes is no longer an issue.

The proliferation of nontraditional families, coupled with a dramatically higher federal estate tax exemption, has shifted the estate planning focus in many cases to non-tax issues involving family dynamics. The significant rise in nontraditional families, representing an array of unique new profiles, means that estate planners should be flexible in dealing with the expanded and distinctive nontraditional families' interpersonal issues. Premarital agreements in blended families can go a long way to address the family's dynamics.

Traditional and Nontraditional Families Share Common Estate Planning Issues

"Stuff"

Over the years, traditional and nontraditional families accumulate all kinds of stuff, or tangible personal property, known here as TPP. Some TPP may be quite valuable, or maybe not, but holds sentimental value making it "priceless."

A distribution plan is advised to minimize family conflicts and hurt feelings. Typical approaches include:

- Direct the personal representative to decide who gets what. This is often done when the personal representative is the surviving spouse or partner, although hard feelings may still result.
- Allow the beneficiaries to decide. This approach has the disadvantage of encouraging a bully beneficiary to overwhelm meeker beneficiaries.

- Direct the beneficiaries to "draw straws" to determine an order of distribution among themselves, tracking the value of the distributed TPP to ensure fairness. This approach works well as long as the TPP has been appraised.

Otherwise, the distribution may be uneven resulting in resentful beneficiaries. Some states permit incorporation by reference, so that a separate memorandum, which can be easily changed, governs who receives the TPP. Other states don't recognize the separate memorandum as anything more than a moral obligation.

Clearly there is no perfect distribution plan for TPP. However, with thoughtful pre-planning, harmony among family members may be achieved.

Business Owners

Testamentary dispositions of closely held businesses from traditional or nontraditional families may severely test the family structure. Issues that frequently arise involve (1) the orderly transfer of business management to a child or children, and (2) how shares should be equalized between or among children, particularly when only some children have the aptitude or the interest to be involved in running the business. Transition of the business to the children often challenges the parent-owners because they have a natural reluctance to pass control of the business to their children. To increase the chances of success in business succession, parents are encouraged to discuss their goals with their children to minimize hurt feelings by the non-business-minded children. Succession planning is a transition process, often requiring years to gradually let go of control.

The List Continues: Special Needs Family Members, Fiduciary Selection, Etc.

Children have different strengths and weaknesses. The weaknesses or special needs may include addiction or substance abuse, disabilities, indebtedness or inability to handle money responsibly, marital problems, or a general lack of maturity. Sometimes, it is appropriate for one child's share to be held in trust for him or her, managed and administered by a trustee, while the other children receive their shares outright and free of trust. Although the family dynamic may suffer when children are treated differently, careful planning and explanations may allay some of the resentment.

Similarly, not everyone is a suitable choice to be an executor or trustee. A spouse may be too emotional or grief stricken to handle the hard tasks of a personal representative. A child may have the financial expertise to make investments, but lack the empathy to be a trustee, and so perhaps should serve with a co-trustee having those other qualities.

Based on demographic statistics reported for over 50 years, the nontraditional family with evolving family dynamics is here to stay, diversify and flourish. That said, the estate planning professional must go beyond minimizing taxes, and must also seek creative ways to promote family harmony within the family's dynamics.

who's who

Carole B. Sheffield is a shareholder in the Philadelphia office of Anderson Kill. Ms. Sheffield handles complex matters of federal and state tax preparation of estate, gift, fiduciary income and personal income tax returns for trusts and estates. She has extensive experience in probate and orphans' court, where she has litigated and mediated for trusts and estates with regard to noncontested and contested matters for individuals and corporate trustees.

(267) 216-2732
csheffield@andersonkill.com

Based in New York City, the firm also has offices in Ventura, CA, Philadelphia, PA, Stamford, CT, Washington, DC, and Newark, NJ.