

## **The Estate Planning Advisor**

### **Leaving Things To Chance**

**By Richard J. Shapiro, J.D.**

When meeting with a prospective estate planning client, I often hear comments such as “I want to keep it simple” or, “my kids will work everything out after I die.” Of course we all seek simplicity, and hope that our children will live harmoniously after our deaths. But, all too often, those hopes and aspirations go down in flames without proper planning.

Here’s one example: I recently met with a widow who has four adult children. The client owns a house in Sullivan County, and another property with a mobile home in the State of Florida. She also has about \$300,000 in liquid assets. When I asked her how she wished to dispose of her property, she said that she wanted her Sullivan County home to go to one of her sons, and the Florida property to go to one of her daughters, with the remaining assets to be divided equally among all the children. She explained that two of her children previously had been given real property on which they had built homes, and she wanted her other two children to receive some real estate as well.

I asked the client whether the properties were of equivalent value; they were not. The Sullivan County property was worth about twice as much as the Florida property. I asked her how she thought her children would react if they received inheritances of differing values. She believed that her son, to whom she planned to pass the Sullivan County property, “would be fair” to his siblings in distributing the assets. I told her that, in my experience, expecting the children to work out the distributions among themselves is a recipe for disaster. Even if the oldest son were inclined to “even out” the inheritances – and in my experience, such an expectation is often unrealistic – by making any after death distributions of assets bequeathed to him, the son would be making taxable gifts for any amounts provided to his siblings in excess of \$12,000 in any calendar year.

As a result of our discussion, this client recognized that she would not be doing her children any favors if she were to follow her original plan for passing her assets. Instead, she decided to leave the two children who had not received any prior gifts the sum of \$50,000 apiece, with all remaining assets to be distributed equally among all the children. With this disposition, a child who had a particular interest in any of the properties could buy out his or her siblings at the then fair market value. If none of the children wished (or could afford) to purchase either property, then the properties could be sold after mom’s death, with the sale proceeds to be divided among the children.

The attorney’s role during an estate planning meeting should not be limited to simply repeating what the client says in “legal” form (i.e., producing a “boilerplate” will or a trust). Instead, the attorney should ask probing questions and test the client’s assumptions by describing a number of “what if” scenarios. Only after reviewing all

realistic possibilities can the client take reasonable comfort that the estate plan will in fact meet their expectations of success, and have a likelihood of preserving family harmony.

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