Estate Planning Guide

4 Common Questions About Estate Planning for Your Children

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Estate planning can be an intimidating process. With this in mind, we have gathered four questions about the estate planning process and have provided answers in a Q&A format.

1. I've helped some of my children financially during my life. What is the best way to equalize my other children at my death?

One way to look at this question is to ask yourself if it is important to treat your children equally or equitably. These can mean very different things.

Equal may mean that the children receive their equal share of each piece of property, while to some, it may mean each child ends up with assets that equal the same market value even if they receive different property.

However, each child may have different needs and circumstances. Treating all children equitably may mean getting them all to the same place in life, even if that might mean paying more for college or support for one child than the other or supporting one child through a difficult divorce while the other child remains happily married. Under this scenario, each child remains in a similar position, although it may take a different amount of assets to get them there.

Either way, there may be a time when equalization is needed. You can equalize by providing for this in your estate plan and documenting the gifts you deem disproportionate in a separate writing that the Will references. You could also make a lifetime gift at any point to equalize and then provide for equal gifts in your will.

2. How do I structure trusts for my children that motivate them to work and create but also provide enough flexibility to support them when needed?

Trusts function best when they are created as flexible vehicles that can adapt to the changing needs of a beneficiary over their lifetime. The long used (and IRS approved) trust distribution provisions allowing for distributions to the beneficiary for health, education, maintenance and support, give a trustee fairly broad discretion to support the beneficiary. However, some parents fear this language is too broad and that a trustee might provide too much for the child and disincentivize the child to strive and prosper.

Some parents include "incentive" provisions within the trust that attempt to address this concern. Incentive provisions are intended to incentivize behavior that the parent deems desirable. Provisions can include cash awards for achieving certain life events, such as graduating from college, making a lifetime commitment to a partner, or having a child. They can also include matching a salary so the child has to work in order to access the trust or supplementing a salary so the child can commit time and energy to charitable or artistic endeavors.

3. Should I consider establishing an irrevocable trust funded with insurance to make sure my kids have the liquidity to maintain the family/vacation home, etc.?

If there will be no other liquidity in your estate and your children intend to keep and not sell the family/vacation home, then insurance can be an important planning tool to help provide that liquidity. In this type of scenario, it will be important to assess whether the liquidity crunch is likely to be a short-term issue (i.e., it will be an issue if you die within the next 10 years but not after that because you anticipate a liquidity event, etc.) or a long-term issue (your wealth is all tied up in illiquid assets that you don't anticipate selling). If you anticipate that the liquidity need will only be a short-term issue, then it may make sense for you to consider "term insurance," which is significantly less expensive than a permanent policy would be. If you are married, you can reduce insurance costs by structuring your estates so that no estate taxes will be owed until the second spouse dies and then purchase a second-to-die insurance policy to provide liquidity for estate taxes as well as any additional liquidity needed to support the asset that you intend to pass on to your heirs.

4 How do I choose a trustee?

There are multiple considerations when choosing who should be the trustee of a trust. A Trustee needs to be a good administrator, a competent investor, and an excellent fiduciary. Hiring a corporate or professional trustee is a good way to check all the boxes, but some families wonder if a trustee who isn't close to the family can know their children well enough to make the right decisions. The short answer is yes; with the proper due diligence, a trustee can make well-informed decisions and is also bound to always act in the best interest of the beneficiary.
A common question we hear is if a beneficiary can be the trustee of their own trust. This is more common when a surviving spouse or child is seen as financially adept, but there are tax or asset protection reasons to keep the assets within a trust structure. In those cases, depending on the situs of the trust, it is possible. However, there are limits on what one can do as their own trustee. A beneficiary trustee is limited to discretionary distribution decisions based on health, support, maintenance, and education. If there are any decisions to be made outside that scope, then the beneficiary trustee should bring in an independent trustee to make those decisions. An independent trustee is someone who is not a party to the trust and not related to the beneficiary. You might consider naming a corporate or professional trustee to serve as a co-trustee with a beneficiary trustee in order to make these types of decisions and also to provide administrative services.

In case you missed it, read the other articles from our estate planning FAQ series:
7 General Questions About Estate Planning

Estate Planning Guide: 7 Questions About Estate Planning With Your Spouse

If you have any questions or would like to discuss your estate and financial planning, please contact us.

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