

# Family fairness: Ensuring a legacy of harmony

In a perfect world everyone's behavior and attitudes would be quite predictable. In the real world, unfortunately, people—even those close to us—may not necessarily think and act the way that we expect.

By some estimates, as much as 70% of family wealth does not make a successful transition from one generation to the next. “The issues of communications, lack of trust and betrayal are again and again the reason for the high failure rate of families around the world,” according to Roy Williams, coauthor with Vic Preisser of *Preparing Heirs: Five Steps to a Successful Transition of Family Wealth and Values*.

## **Goal: equality**

Parents often recognize that although siblings may love and respect each other, when it comes to issues of inheritances and dividing money, the picture may change.

A typical solution is to treat all children equally. Yet circumstances may make achieving that goal extremely difficult. If, for instance, lifetime gifts or “inheritance advances” have been made to one child, taking steps to “equalize” a bequest to another child is possible. Making such provision is probably best done during one's lifetime rather than by will or trust, so that misconceptions or miscommunications are avoided.

There can be a multitude of family circumstances that call for a more formal plan of action. For instance, what happens when a child has poor money management capabilities? Or finds himself or herself in a difficult marriage? Or has special medical needs?

In these situations, and many others, a carefully crafted trust may offer a potential solution. Language in a trust document can call for a child's inheritance to be conditioned upon gainful employment or protected from a divorcing spouse to ensure that the assets pass to future generations. A special needs trust can be established for a disabled child to preserve eligibility for government assistance.

### **Goal: impartiality**

Naming a child to serve as a trustee or executor may cause tensions. Those positions carry with them authority and control—and may be perceived as favoring one child over another. Appointing an independent trustee and executor relieves those tensions and assures children that judgments will be rendered impartially.

As succinctly stated in *Beyond the Grave: The Right Way and the Wrong Way of Leaving Money to Your Children (and Others)* by Gerald M. Condon and Jeffrey L. Condon, two highly experienced estate planning attorneys, “In my thirty-five years of practice, I have found that the overwhelming majority of bank Trustees perform Trust services reasonably, responsibly, and efficiently.”

### **Distributing personal assets**

To baby-boomers the most valuable possessions may not necessarily be art or antiques but, rather, more contemporary collectibles, such as trading cards and Barbie dolls.

“It doesn’t matter if it’s a lot or a little money,” says Dr. Henry F. Smith, a psychoanalyst affiliated with Harvard Medical School. “Money is a way to quantify love. And both anticipating and receiving [an] inheritance intensifies both the loving and hating aspects of relationships between child and parent, and sibling and sibling.”

What can be done to avoid a conflict over family heirlooms and collectibles? One solution may be time consuming but surefire: Identify a beneficiary now for everything that carries sentimental as well as real value to family members. Another idea is to make gifts of those collectibles that are likely to cause problems later. A family meeting can be convened to find out how each child feels about treasured objects, and plans can be made or adjusted, taking into account what has been gleaned from the discussions.

Making gifts of collectibles and family heirlooms during one’s lifetime also makes sense from a tax perspective. By taking advantage of the federal gift tax annual exclusion, assets that are potentially subject to estate tax at death can escape tax altogether. In 2009 the gift tax exclusion is \$13,000 per individual (an amount that is indexed to inflation). In addition, any future appreciation of the gifted property escapes taxation in the donor’s estate.

Finally, with a major collection, consideration should be given to a sale of the collection to another interested collector. The proceeds from the sale then can be divided

accordingly. If the collection is to remain intact, detailed instructions should be left that will permit the experts to determine the value of the collectibles and how best to dispose of them.

### **Call upon us**

We would be glad to provide you with more details about how living trusts and testamentary trusts can assist you in developing an equitable estate plan. Please feel free to call upon us at any time for assistance.

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Any developments occurring after January 1, 2009, are not reflected in this article.