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**Playing Favorites**

JANUARY 7, 2014 • CAREN CHESLER

Rick and Lisa (not their real names) owned several car dealerships that, with a value of about \$10 million, made up the bulk of their estate. While they have three children, when they drew up their estate plan, they gave almost all of the dealerships to their oldest son, Carl, since he had worked for the businesses since graduating college. His two sisters had not.

The family's advisor, Wendy Witt, an estate planning attorney in Pittsburgh, warned the parents the arrangement might not sit well with their daughters even if they understood the reasoning behind the decision. Children almost always interpret unequal inheritances as an expression of unequal love, Witt told her clients, and giving one child more than another may make them feel slighted and angry.

"We specifically spoke about it, and they felt because their son was involved in the business, what they were doing was appropriate," Witt says.

At Witt's urging, the family held a meeting that included a psychologist who specializes in issues involving high-net-worth families and, naturally, the daughters expressed concerns. But the parents, who are still alive, are maintaining the unequal distribution of their wealth.

For Witt, it was a job-defining experience that many estate planners face with their wealthy clients. Namely, how do you unevenly distribute wealth among children—for entirely valid reasons—without sowing family discord.

"It's very hard to do, and I don't recommend it often," Witt says. But she notes that her job is to create an estate plan that carries out the parents' wishes, and that's just what their plan does. "We raised the awareness of the issues, that it could cause problems down the line, not just to this generation but with the grandchildren, and they're comfortable with it. They understand it."

When asked whether she thought the daughters were likely to be as understanding after the parents have died, she said, "I think they're going to be as understanding as they can be under the circumstances. There's an intellectual level of understanding, and then there's the emotional level of understanding."

Are they likely to understand their parents' wishes on an emotional level? Probably not, Witt says.

There are a variety of reasons parents may want to give one child more than another, from punishing children who are drug addicts to rewarding those who have cared for them in their old age. But while every situation is different, one thing remains the same: If you play favorites in the will, don't expect your kids to come home for the holidays.

Advisors say it doesn't happen often, but parents who divide their assets unevenly are playing with fire. That said, there are things they can do to try to keep the fire under control, so it doesn't become a conflagration that blows the family up.

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 BY CAREN CHESLER

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### Creating Incentives

It helps to understand why parents would dole out their estate unequally. One of the most common reasons is that one child is abusing drugs or alcohol. It's not always a situation where addicted children receive less money—often, families will structure their estate plans to limit their access to it. While their siblings may be able to tap their inheritances at will, the child with a substance abuse issue may see his or her inheritance locked up in a trust, so to speak, forcing them to go through a trustee to get the key. Oftentimes, the trustee is actually prohibited from giving the child money directly—until they've become sober. Instead, the trustee may pay the child's rent, utilities and other essential bills directly.

Substance abuse isn't the only reason to keep money away from a child. Parents may find one child problematic for a variety of reasons, such as lacking the motivation to go to college or get a job. For the so-called "bad seed," parents can create an incentive trust that gives the child payments when he or she meets certain documented goals. The triggers can be anything from gaining admittance into college, entering a rehab facility or matching one of his sibling's income.

"It gives the child some incentive to do better. The more goals they attain, the more money they get," says Christopher Dukes, CEO of Dukes Wealth Management in Simi Valley, Calif.

Some parents leave more money to the neediest child. Usually it's someone with an ongoing issue, either physical or psychological, and the parent is worried about what will happen to them, says Patricia Maisano, founder of IKORGlobal, a healthcare advocate in Kennett Square, Pa.

Maisano, whose firm often advises estate lawyers, says she had one case where one of the sons suffered a severe head injury in a car accident as an adult, rendering him unable to care for himself. Prior to the accident, he was a biochemist. After the injury, his parents switched their estate around so the bulk of the estate would go toward his care after they were gone. The man's brother didn't mind he was getting less, probably because he didn't grow up with a disabled sibling, Maisano says.

"He understood the options: either let dad's money pay for his brother's care, or let his brother come live with him and his wife, and he didn't want to do that," Maisano says.

Oddly, siblings are sometimes less understanding when more money is given to a sibling who has been disabled since birth, estate planners say. Even though they know the child is receiving the additional funds for care, they sometimes feel they've already been overlooked enough by their parents, Maisano says.

"In families where there is a disabled child, the house revolves around the child who is disabled, from where the family goes to how they travel. And the kids are very sensitive to that," Maisano says.

But then a child doesn't have to be disabled to be needy. Sometimes one child receives more because they kept going to the parents for loans. One way of dealing with that is for the parents to set money aside in a trust for the other children every time they give money to the needy child, advisors say.

Sometimes it's the parent who needs care, and the will is changed to compensate the child who took care of them in their last days. Letha Sgritta McDowell, an estate attorney for Walker Lambe Rhudy Costley & Gill in Garner, N.C., knew a woman who went from a full-time job to a part-time position so that she could take care of her mother. To compensate her daughter for lost income, the mother changed her will so that the daughter received 60% of her estate while her son received just 40%.

### ON THE MOVE

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"The daughter wasn't able to contribute as much to her retirement plan, she lost opportunities for promotion. The loss really did add up," McDowell says. "But as far as I know, Christmases are still fine in that family. The son was a little hurt when he found out his sister was getting more, but they had a pretty good relationship prior to their mom passing, and that has absolutely helped."

#### **A Level Playing Field**

Some parents will give more money to one child to level the playing field between him or her and other siblings. One child may have a booming business worth \$25 million and another may not work and is married to a mailman. In some cases, the parents will try to equalize that huge disparity in net worth, says Mickey Segal, a partner at Nigro Karlin Segal & Feldstein, a business management firm based in Westwood, Calif. Similarly, Segal says he's seen families where all but one child have a house. The parents may buy that child a home and then split the rest of their estate equally among the others.

"The few times I've seen it, I've told the parents they need to have some kind of discussion with their children in advance, to help them understand," Segal says. "But in most cases, I have found that where you see a huge disparity in distribution—usually with the much bigger estates—that even with the disparity, everyone gets enough to be OK."

Now and again, one child may receive more than his or her siblings inadvertently. If a parent becomes infirm, for instance, there's often a child who lives nearby who takes on the parent's care. To cover expenses and medical bills, the parent may open up a joint bank account with that child. After the parent dies and the estate is divided up, that child usually winds up with the money left in that account.

"The child who lives locally gets that entire amount, regardless of what the will says," McDowell says. "That happens very, very frequently."

Or maybe the parents gave one child the family business and another child a cash equivalent, and then the family business hits the skids, either because it was poorly managed or the business model failed. Wendy Goff says she had a client who did just that, and the product the company sold, while popular when the father made out his will, became obsolete. The father wound up giving more money to the child who owned the business.

But equality is in the eye of the beholder. Some parents give more money to their sons and daughters who have children—and thus higher expenses—only to find their other kids feel they are being penalized simply for having no children. Some parents give more money to children with lower income, only to find the children who are well off feel they are being penalized for being successful. Ultimately, it doesn't matter whether they're trying to be equal or equitable. Someone always feels they're getting the short end of the stick, Goff says.

"Come sit in my office for a day. It's not about what's fair. It's about what people think is fair," she says.

That's why she recommends that parents give gifts while they're alive and able to explain their actions. That way, they can adjust the distribution if they sense there is too much inequity—and they can force their children to get along if they misbehave.

"Even if the kids are 50, the parents still have a little bit of influence," Goff says. "They have a better chance of successfully keeping the family together than when there's just a will and a lawyer."

If they are going to give more money to one child—say they want to pay for their grandchild's education—Goff suggests paying those expenses directly. That way, the other children won't know what their siblings are receiving.

To that end, Irwin Feinberg, an estate attorney with Feinberg Mindel Brandt & Klein in Los Angeles, recommends setting up discreet trusts for each child.

The trusts can be unequally funded, have different trigger and incentives, and neither child will know what the other is receiving. If all of the money is put into one trust, all of the beneficiaries of that trust are entitled to copies of the will or trust. If the estate is divided into separate, discreet trusts, only the beneficiaries of each trust are entitled to ownership documentation.

"If the goal is to avoid family disharmony, that's what I suggest," Feinberg says.

#### **Trustee As Referee**

Sometimes it's not that one child is given more money. It's that they're given more power. Don Weigandt, a wealth advisor for J.P. Morgan Private Bank in Los Angeles, says he had one client with \$20 million and four children, and the money was set aside in a trust for the life of those children, but one of the four was made trustee. That meant the other children had to go to that child to get a distribution.

Weigandt says the money was put into a trust for good reason: to protect it from creditors and ex-spouses, and other people who might influence the children. But when one does that, there's always a dilemma, he says. If you name a peer, they may not live long enough. If you name all of your children, they may scratch each other's back to get at the money. So you name one child, and they all have to go through that child to get distributions. But that's a recipe for bad relations, he says.

"It's a situation that can work, but they can become resentful because one sibling has been elevated," Weigandt says. The solution, he says, is to hire an independent trustee. In fact, he's seen more and more families move in that direction.

A professional trustee can be particularly helpful with estate plans that have so-called "good citizen" clauses, where trust fund distributions are stopped if the child misbehaves, such as going bankrupt, getting a divorce, or worse, winding up in jail. If the spigot is going to be shut off, best to have an independent trustee do it if there is to be any hope of maintaining family relations, Weigandt says.

While parents can do whatever they want, the one thing experts advise against is leaving one child nothing at all. That's because the child will surely contest the will and may actually wind up with something if the siblings decide to settle, just to make the litigation go away.

"Leaving one child nothing may be what they want to do, but it may not achieve their goal of disinherit," says Weigandt. "It doesn't take much to find a lawyer willing to work on a contingency to go to court and say this was done under duress or fraud or undue influence, or it was a mistake, and then you've got litigation. The executor may prevail against the attack, but you're going to burn up a lot of legal fees."

For that reason, advisors suggest leaving that child a modest inheritance—just enough to make him not want to sue. Say it's a \$5 million estate. A few hundred thousand dollars would probably do the trick, Weigandt says. The will should then include a 'contest clause,' which states that if the beneficiary sues and loses, they lose their bequest as well.

In the end, the best hope of keeping the family together in the face of inequitable distribution is communication. Most advisors recommend a family counseling session so that the parents can at least explain to their children why they're doing what they're doing. At the very least, they should create an "ethical will," in which they explain the motivation behind their decisions.

"For people who are doing something slightly different, they want to make sure their kids understand that it's not a lack of love or mistrust," McDowell says.

But parents don't always want to have that conversation about money. It's uncomfortable. Take the parents who leave more money to the child taking care of them at the end. There's a tremendous amount of resentment from the other siblings when that happens, says Mela Garber, partner at Anchin, Block & Anchin, an accounting firm based in New York. The other children feel like they're being punished simply because they live farther away. So what often happens is the parents die, there's a fight over the assets, and the siblings claim the child who lived nearby exercised undue influence over the parents.

"It breaks relationships, and it's usually hard to fix later on, particularly when it results in litigation," Garber says.

That's why she suggests communicating with the children about the plan. But she says the response from her clients is usually, "Well, that's your job, to make them understand."

If the parents decline to have a family meeting, she suggests at least writing their children a letter that won't be opened until they pass, explaining why they distributed the estate unevenly.

"It's sometimes easier for them to do a letter. That way, they don't have to face the kids," Garber says. "It won't always eliminate the fights, but it may minimize the situation when the kids start threatening litigation."

Allison Shipley, a high-net-worth tax specialist in PwC's Miami office, says she had a client who left 10% of his \$15 million estate to each of his boys and 40% to each of his girls, but the boys received their shares in a lump sum while the girls only had access to the income generated by the principal. Their father felt the boys had very good jobs and could provide for themselves, while he wasn't convinced the girls would have a steady income. But it left the girls wondering why they weren't trusted—and these were well-educated women, Shipley says.

"I know it was out of love. He was trying to provide for them. But there were unintended consequences," Shipley says. "The boys felt like they were working hard and had good jobs, and they were left a smaller piece of the estate. And the girls felt like they were getting more of the estate, but they couldn't use it."

Shipley said it's hard for people to put themselves in the shoes of the beneficiaries and make sure they've thought through the messages they may be sending. But it might have worked out better if he had talked about his plan, and why he was going to do what he was going to do. That way, the children would have had an opportunity to express their opinions about it and debate the issue with him. At a minimum, they wouldn't have misinterpreted what he was doing.

"He still has a total right to do what he feels, but at least he wouldn't have hurt the self esteem of all four children," she says.