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Disinheriting an Heir

Give your client options to help deal with tough emotional issues.

Stanley H. Teitelbaum , Martin M. Shenkman | Mar 12, 2019

Disinheritance creates complicated issues for many families.

There are myriad ways to leave assets to heirs, so there are many different ways that clients approach disparate distribution schemes. That's complicated by the varying facts and circumstances. These issues aren't a "one size fits all" plan. Clients encounter many difficulties and conflicts when trying to figure this out.

Example 1: Your client is an elderly mother with two children. She wants to leave her estate 60 percent to a caring child who's spent incredible effort taking care of her as she's aged and 40 percent to an uncaring child who's done little. The children have a relationship, and the mother doesn't want to create ill will that could harm the children's relationship. In this situation, more creative planning may be done to provide additional value to the caring child in a way that's less obvious to the uncaring child. For example, the mother might have a joint account that on death transfers to the caring child, or she might use life insurance.

Example 2: Your client is an elderly mother with two children. She wants to leave her estate 100 percent to the child she has a close relationship with and nothing to a child who's distanced himself from the family and hasn't communicated with the mother or other family members in decades. In this situation, the attorney will carefully draft a will assuring the entirety of the estate passes to the close child and perhaps state clearly that the other child is intentionally receiving no inheritance to minimize the risks of a will challenge. However, while this still may be a difficult emotional process, some of the complexity and issues that affect other situations might be lessened as the rift is so great there's little risk of offending the disinherited child.

As expected, many situations in which clients want to disinherit an heir or provide disparate distributions are on the complex and difficult continuum between the above examples.

Minimizing Pain

Minimizing pain is a factor to consider. First, clients must understand their decisions, wade through the emotional and psychological turmoil and then identify the issues to be addressed. The client and attorney must recognize that this is a ubiquitous problem made harder by the client's potential feeling that he's the first and only person to be making this kind of difficult decision. The attorney can and should provide immediate feedback to the client to help assure him that this isn't the case and that this painful scenario sadly is quite common. This helps to normalize

the conflict. In the context of an estate-planning team, different advisors may have different comfort levels with these conversations, and it may be helpful to have those most comfortable tackle these initial discussions.

If a client knows, or is helped to understand, that confronting this dilemma is a major step forward, it may ease the difficulties of proceeding. Attorneys should acknowledge that the step the client took to seek professional help to create a plan is important and laudatory. A client may come in to the estate-planning attorney in an emotional state and ask the attorney to create a will to direct each half of the estate to two children and nothing to the third. Some attorneys might simply move on to the next questions in the initial meeting and then go about drafting such a document. But the client may not have sufficiently delved into the why, or the details, of the disinheritance.

Example 3: A couple was very upset that their son was marrying and, against their advice, refused to sign a prenuptial agreement. They went to their estate-planning attorney and requested that their will be revised dividing their estate between their other two children and disinheriting the obstinate son. The attorney, without engaging them in any discussion, drafted the will and supervised the signing. The attorney was oblivious to the highly charged emotional state the clients were in. The attorney didn't explain that any inheritance could be held in a well-crafted trust that would control and protect the principal and distributions in accordance with the parameters they created. If the clients had died and this estate plan been effectuated, the relationship of the children would have been permanently fractured. New counsel engaged the clients in discussion, addressed the fact that prior gift plans were made without the benefit of protective trusts that would have minimized or avoided the entire issue and drafted a new will with protective and restrictive trust provisions. An institutional trustee was appointed for the son's trust so that the son wouldn't be able to pressure them into violating the parents' wishes for his trust.

The Psychology Behind the Decision

It may be worthwhile for the client to first speak to a psychologist before making a drastic legal decision. The attorney must acknowledge that this embraces many emotional and psychological issues and to encourage the client to explore the history and emotional justifications. Awareness of family history helps the attorney understand what prompts the client's conflicts and aids in working up a well-thought-out plan.

The attorney needs to try to get into the client's thought process behind his desire to disinherit. If appropriate, the planner should ask the client how he feels about this decision and what prompted him to consider this action. Ask how much thought he's given the decision to disinherit, and how he believes his estate plan and family will be affected.

It's a hard step to ask the client what precipitated this decision, because it's painful for him. Many attorneys don't have the training to guide clients through the full range of issues, albeit an important part of the process. It's usually a highly emotionally charged issue for the client, and it's imperative and helpful for the attorney, as well as a psychologist, to proceed with a nonjudgmental attitude. By asking preliminary questions, for instance in the abovementioned examples, the attorney might learn that the client wants to disinherit his third child for a reason such as he doesn't like his spouse. In that case, the attorney could advise the client to put that third of the estate into a trust for the daughter, and the spouse will never have access to it, even if they divorce.

From the client's perspective, he comes in with a set idea of what he wants and expects the attorney to set it up. However, the attorney can get to the philosophy and give the client what he needs while reframing what he wants. Many times, a client has a fixed idea, but further exploration can stimulate the client thinking more about whether he's making the soundest decision, all things considered. The attorney can explore any misgivings and present viable options and alternatives.

Encourage Dialogue

When a client wants to decide something as drastic as disinheritance, encourage him not to treat it lightly or act in haste. Engage the client in a dialogue that helps bring more clarity. Offer a range of possible options and outcomes he can choose. When appropriate, suggest to the client that it can be useful to seek a professional consultation for deeper understanding as well as support for the emotional aspects of designing his inheritance plans.

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