WhittierTrust

How to Avoid the Downsides of an Estate Plan

1. Appointing one child as trustee over another.

2. Creating a trust that does not include spouses.

3. Setting up uber-limiting clauses in a trust.

Many considerations are at play when creating an estate plan. Parents and grandparents often want to make sure family members are taken care of, while simultaneously enacting their own vision for the family legacy and goals for their estate. However, sometimes those decisions might benefit from a different viewpoint. That's when Whittier Trust client advisors step in to point out potential unintended downsides of trust planning so that the patriarch and/or matriarch of a family can make more informed decisions for their family's future. Here, Dave G. Covell, Jr., senior vice president and client advisor at Whittier Trust, outlines a few common pitfalls of trust planning and alternative ways to address them.

1. Appointing one child as trustee over another.

Parents might be inclined to make the more responsible or eldest child the trustee of their estate. However, this can create a rift between siblings. The parent has elevated one child over the other(s). This can create conflict and evoke emotional reactions ("Mom/Dad always liked you best!") from the others(s). Conflict can occur when the trustee sibling doesn't approve of his or her siblings' spending habits and denies trust payments to them, which can then have a trickle-down effect on the grandkids if their families become estranged. As a result, "I would advise anyone creating an estate plan to have an independent party like Whittier or a trusted non-family member serving as the trustee, as there is too much downside to having one child making financial decisions over another child in the family," says Covell.

He notes that not treating everyone the same, including a scenario where one child receives a trust and another does not, will likely have a ripple effect on the family down the road. He explains, "Typically, parents want kids to get together and be a family. So, it's our job to raise a hand and say, 'These choices are going to create problems.' But if you want to do things unequally, let's see how best to approach it in your estate plan.'"

2. Creating a trust that does not include spouses.

Parents often want to make sure that if their married kids get divorced or pass away, their assets don't end up going to the non-family member spouse. "If, say, their son or daughter passes away, leaving a surviving spouse and child(ren), there can be unintended consequences if the spouse isn't provided for. If all the trust money goes directly to the grandkids, it

can complicate the relationship between their mother or father, whoever is the non-family member spouse, and their kids," says Covell. He advises that there are ways to plan for these circumstances to maintain good family harmony. One way to provide for a non-family member spouse is to require the spouse to be married and living in the same household at the time of the family member spouse's death. Another option is to give the family member spouse the power to appoint all or a portion of the net income to the non-family member spouse.

3. Setting up uber-limiting clauses in a trust.

Parents might want something specific for their children and insert a clause into the estate plan that may be potentially unattainable or shortsighted. For instance, parents might want their children to become high earners and set a financial incentive such that if they earn $100K per year, they'll get a $100K match from their trust. "At Whittier, we would advise against that because it doesn't take into account other scenarios, such as having a profession like a public service job that is less lucrative yet highly rewarding to the child personally and to their community," says Covell. He offers the example of a client who could afford to accept a fulfilling, yet lower-paying teaching job because she was the beneficiary of a trust that greatly supplemented her annual income. Likewise, Covell says to beware of tight restrictions posed around education because one might not know how a child or grandchild is going to develop—instead of college, they might opt for a vocational school, or there might be a developmental issue that requires alternative options to traditional higher education down the road. "Creating the flexibility to adjust to future unknowns is indicative of a well written trust," he notes.

Additionally, parents might want to leave a property that is near and dear to their hearts and want it to stay in the family. An example of legacy properties might be a cabin or family ranch. If the beneficiaries don't live on or near it, don't have the wealth of the parents to maintain it or aren't interested in taking it over, the parents might need to rethink how it is written into their estate plan. "Parents might need to set aside funds for that property's maintenance and hire a manager or others to oversee the property long-term. It might mean their kids get less of their other assets if that's a focus for them," says Covell.

While the wishes outlined in the estate plan are up to the parent or grandparent creating it, a professional estate plan advisor can help offer guidance to ensure the longevity of family legacy and avoidance of unnecessary conflict for the best outcome possible.

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