

A Special Gift From You to Your Family

BY BEN KINIRY

A Special Gift From You to Your Family.

It's the time of year when many of us are feeling the holiday spirit (I hope you are one of them, I certainly am). Billions of dollars will be spent on gifts of all shapes and sizes for friends, children and other loved ones. Everything from teddy bears and easy bake ovens to the coolest electronics and perhaps a Corvette or two. It's in this spirit of giving I will suggest to you that creating an estate plan for the benefit of your children and other loved ones (I will use "children" hereinafter) is a *special gift* indeed. A gift that keeps on giving and has numerous benefits (I know you can't drive it, so maybe not fun like the Corvette).

I'm not suggesting that you run out and have an estate plan created and leave a copy under the Christmas Tree for your children to open on December 25th. That would be a gift your children would never forget. Seriously, they would never let you forget. Rather, I'm just planting the idea that proactive planning is truly a wonderful gift to make to your children.

Why do I frame this as a gift for your children you ask? I know you're thinking that an estate plan is for you and I don't want to take away the importance planning has to you in controlling your affairs. However, I'm of the opinion that a portion of the value of estate planning is in the benefit such planning provides to your children.

Why is creating an estate plan an important gift to your children? The answer can be found in STRESS and FAMILY RELATIONSHIPS.

Stress

As we all know, stress is a killer and many of us go to great lengths to avoid stress or to overcome it (like feeling the freedom of driving around in that new corvette). Creating an estate plan is a proactive means of avoiding or decreasing stress your children may otherwise incur.

If we think about what is generally happening when the tools of an estate plan (both financial and healthcare powers of attorney, Wills and Trusts) spring into action, then it's obvious that planning ahead of time is most beneficial. It's when your health declines, whether it's strictly cognitive or another physical ailment, and you are no longer able to manage your financial and personal affairs that your named agents step in to assist. Think in terms of emergency room visits, choosing caretakers, visiting nursing homes and pending death (I know, *naughty* to think about, but this is a call to action after all). Someone has to step in and make



all of the decisions, many of them difficult, at a time that is already difficult for your children.

What if no one has the legal authority to make decisions? Then your children are off to the probate court and a process they don't understand, which takes a fair amount of time and yes, there are costs and fees involved. Who will the court appoint? Who should the court appoint? You didn't pick and now your children and the judge need to work it out. Let us not forget, that your children have full time careers and are raising your grandchildren who have school and sports.

All these issues and we haven't even started discussing the disagreements your children will have about who should be in charge and what you would have wanted, which brings us to family relationships.

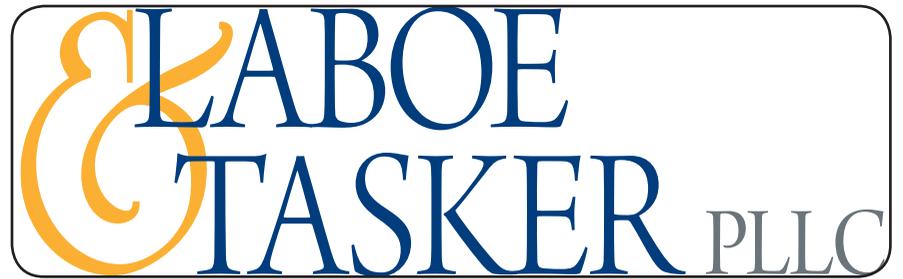
Family Relationships

If you have read my articles in the past, then you know I'm a big fan of keeping family relations intact. What could be more important? A benefit that I have seen over the years in creating an estate plan is that your children (and grandchildren), and their relationships with each other, will fare better in the case of good planning.

In the case of the families that create estate plans, someone is aware they are to step in and take action on their parent's behalf and they have some written guidance provided by the plan and likely have held discussions regarding their parent's wishes on various topics. Though some family members may not like the parent's choice of agent, they will understand that the parent made the decision and will likely honor it.

It is true the kids may fight over what the plan entails, but given there is a plan, the opportunities for fighting are significantly limited.

In contrast, when a plan is not in place, when the parents don't write down what they want, the result, in some instances, is a kind of fighting that only siblings can engage in. There is yelling and tears and some things may be said that you just can't take back. In the end your grandchildren won't be seeing each other on the holidays next year and perhaps in the years following.



Don't Plan in Decline

There is also the person who creates an estate plan but waits until they have already experienced a decline in cognitive capability to conduct their planning. Sure, Elder Law Attorneys must make a capacity assessment prior to signing estate planning documents, but this does not close the door for your children to argue against capacity. In such cases, the child that intends to disagree with the parent's pick for an agent will claim that the child agent tricked the parent into choosing the agent. Then the fight is on. Not only will they fight over who SHOULD be in charge of the finances and healthcare decisions making, they will fight over the oriental rug, the train set and the Corvette, of course.

The Sand Box

If you don't plan at all, then the children who have always wanted to fight, will unleash their childhood angst on their siblings. That is, you may not know it, but they have been quietly fighting about something that happened "back in the sand box" and have been on a truce for the last 40 years. As soon as you (the *peace* keeper) lose your capacity or die, then the fight is on and what a battle it will be.

You Failed to Give this Gift

Finally, once all the dust has settled and you're gone, your children may very well realize that if you had just put your affairs in order, had you just created an estate plan, so much of the stress and fighting would not have occurred.

Time for Gifting (no, not a Corvette)

If you are approaching retire-

ment age, then you may agree that someday you will experience a decline in both physical and mental health and will eventually experience death. It is my wish for you that you will jump in your *sleigh* (once we have snow) and meet with a professional with whom you will develop a relationship and create a written plan. You will name decision makers who will be well informed of your wishes and their sole task will be to carry out those wishes, both while you are living and for the final disposition of your estate after your gone. Most importantly, these decision makers will have the written authority to implement your plan and will have discussed these most serious of issues with you.

Naughty List

The best opportunity to protect your family from negative consequences is while you are healthy, and if you don't take action, then the opportunity is gone, forever. This lack of action will definitely place you on the *naughty list*. The information provided in this article does not constitute legal advice. If you want legal advice call me at 224-8700.



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