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I'M LEAVING MY ESTATE TO... UGH... PLEASE HELP!

I'm sure we can all agree that coming to terms with our ultimate demise is no doubt difficult, even for those who may be pretending it is not (like me). On top of that, you must do some estate planning, such as advance directives, durable powers of attorney and either a Last Will & Testament or Trust as your final disposition tool, which for many is an uncomfortable experience to say the least.

The best-known section of a Will or Trust is the final disposition of your assets. Depending on your circumstances this may be a breeze. For example, to my children, equally, or unto their descendants if any of them should predecease me. No real thought involved, easy, done!

I have learned, from years of practice and more meetings with clients than you can shake a stick at, the simple solution is not a one size fits all. Luckily, seasoned attorneys have numerous tools in their arsenal to counsel clients to a satisfactory outcome (well, 99% of the time, and sometimes the best outcome means choosing the disposition option you dislike the least).

A Real Life Example: Recently I met with Valerie (a real client), let's call her Val since it is a made-up name anyway and Val sounds way cooler. Val was lost, she really did not know what to do regarding her final disposition of her estate. Val had been writing all kinds of notes (they were all over her table and counter (I was at Val's home, yes I do house calls) trying to figure out who would she benefit upon her passing and to what extent she would benefit them?

Part I - Who do you love, and how much? First, I grabbed a legal pad and we started by making a list of beneficiaries down the left side of the paper and grouped them into categories (not necessary, but was a good avenue in Val's case): five children, eleven grandchildren, three great grandchildren (two more in gestation), two nieces that she is close with, a couple good friends, her alma mater, and her church (see chart). Okay, so now we know who made the list (some family members were omitted due to bad behavior). Next, I wrote "100%" at the top right-hand side. Next, I asked Val to give me an approximate percentage she would like to provide to each category of beneficiaries, and NOT to overthink it. Well, she did overthink it and froze up in frustration. Luckily, I have had a few meetings with Val and had the opportunity to listen to the numerous stories about all the people she desired to benefit (yep, Val is a real talker). For example she said her "children didn't need her money" and that she "really did not know her great grandchildren all that well."

I then told Val that I was going to assign percentages to each of the categories and when I showed her the numbers I made up (I know, some gall I have picking percentages for her family, people I don't even know) she would likely have a few different reactions: a very negative reaction (how could I be so wrong), I could get close and her reaction would be somewhat neutral, or I could nail it and she would think I was a genius or a mind reader. No matter what the response, this technique generally leads to some valuable information as the response provides us with the direction we would need to amend the percentages in each category.

I turned the paper over to Val and she was shocked at how close the numbers represented her wishes and she asked how I did that. I reminded her of some of the things she said about the people in her life, how she said them and the number of times she mentioned a grouping as my guide.

We then worked together to move some numbers up, and some down, but we were not done.

PART II: Another tool of value is Greater than, Less Than.

Sometimes people would like to benefit, well, everyone! Practically speaking, this is not workable unless you have enough value to spread around. Val had twenty-seven people on her list and some of them have not even been born yet (Val even chose to benefit her unborn great grandchildren in gestation at the time of her death). When we went over what the approximate dollar amount of benefit would be for each person (these numbers go to the right side of the percentages, see chart), the result appeared to be borderline reasonable in today's dollars, but what if Val lives a long time or has an extended stay in long-term care and spends much of what she has accumulated? The result may be that some parties would receive very little benefit and the cost of providing the benefit would be unreasonable in some respects (when a person passes on there are steps that must be done in administering the estate and when you provide for smaller gifts, the cost of administration may outweigh the value of the gift).

I proposed that we create a second list of beneficiaries (oh boy, this could be challenging) and break the disposition into two possibilities based on greater than or less than. The first disposition list in Part I, above, would now be applicable only if her estate upon her passing, after all final expenses and cost of administration have been considered, is greater than \$500,000. We now needed to make a new list of beneficiaries and percentages of benefit if her final estate is less than \$500,000. As you can imagine, we worked those numbers a few different ways. Ultimately, Val's children and friends were removed as beneficiaries, her great grandchildren received less and her charities would receive more and the bulk of her estate would go to her grandchildren.

Ultimately, we utilized these tools to get closer to a result that Val felt was correct for her. A result that was much closer than her existing estate plan and one which would allow her to sleep well at night. If you are struggling with not moving forward with your estate planning due to paralysis analysis on the topic of your final disposition, perhaps the methodology discussed below will be of some assistance to you. If not, then perhaps we can get together for comfortable conversation regarding your struggle to see if we can find our way to a solution utilizing a different method.

IF ESTATE IS > \$500,000		
Beneficiaries	100%	Value of Gift
5 Children	4	\$0.00
11 Grandchildren	38	\$0.00
3 or More Great Grandchildren	38	\$0.00
2 Friends	10	\$0.00
Alma Mater & Church	10	\$0.00

IF ESTATE IS < \$500,000		
Beneficiaries	100%	Value of Gift
11 Grandchildren	70	\$0.00
3 or More Great Grandchildren	20	\$0.00
Alma Mater & Church	10	\$0.00