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Should I Treat My Children Equally as Part of My Estate Plan?

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What Does "Equal Treatment" Mean?

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Most parents will say that they love their children equally. But when it comes to preparing an estate plan, does that mean the children should be treated in exactly the same manner? In some cases, the answer is "yes". Parents that have only stocks and bonds or cash as assets can leave those assets equally amongst their children. The children can invest and spend those types of assets without the involvement of the other children. Each child is happy – he or she received an amount equal to his or her siblings and can continue their lives without the interference of others. But parents who have more complex holdings – such as business assets or different rental properties, along with stocks, bonds, and cash, may have reasons to treat their children differently.

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For example, if one child is involved in the family business but the others are not, does it make sense for all the children to own equal shares in the business? Or if the children are friendly but couldn't work together well in managing apartment buildings, does it make sense for parents to leave them equal shares of each property?

Perhaps not.

Also, does each child have the same needs as the other? If one child is incredibly successful financially, but the other is not, should parents favor the child who needs funds over the one who does not? Will the successful child feel penalized for his or her success? Will that impact the relationship between children after the parents die?

Also, different tax attributes of assets might impact which children inherit which assets. If a child is in a lower tax bracket than another, should he or she be the beneficiary of retirement plan assets that are subject to income tax upon receipt? Aside from determining the value of assets to leave to each child, another question is which of the children should be put in charge of managing the parents' estate after they pass? Can the children work well together? Are there some children with experience or skills that the others lack? These questions must be answered in preparing an estate plan and might end up with different treatment for children. Equal treatment does not mean identical treatment, as discussed below.

Non-Identical Disposition of Business Interests

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Parents can treat their children equally by leaving each assets of the same value. However, that equal treatment should not necessarily be identical treatment where business interests are involved. Where one child is part of the family business ("Insider") and the others are not ("Outsiders"), the Insider has different interests and goals than the Outsiders. Insider wants to take a salary for his or her efforts in operating the business; Outsiders may feel that is skimming off the

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top. Insider likely wants to maintain reserves and reinvest in the business; Outsiders want dividends they can spend. In this circumstance, if the business is left in equal shares to all children, Insider will not have control. That is a recipe for family disharmony at best, and for Insider to leave the family business at worst. In this circumstance, parents can consider (a) leaving the business entirely to Insider and leaving other assets to Outsiders or (b) leaving voting control of the business to Insider and non-voting interests to Outsiders.

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