

TWO THINGS CERTAIN®

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KEEPING THE FAMILY INHERITANCE IN THE FAMILY

By Spencer M. Baxter

Our children must face many challenges throughout their lives, and they will invariably make mistakes along the way. Every parent wants to shelter and protect their children as much as possible, but without a properly designed estate plan, parents can add more problems to their children's lives. A fairly common mistake among parents is to leave assets outright to their children (through not having an estate plan or having a poorly drafted plan).

In-Laws are Outlaws

In the estate planning realm, clients and their families need to be protected not only from probate, taxes, and guardianship, but also their son-in-laws and daughter-in-laws. Suppose a parent dies and leaves assets outright to their married daughter. When the daughter passes away it's likely that her assets (including her inheritance) will pass to her husband. This may not sound like a terrible occurrence because many people like their son/daughter-in-laws, or at least pretend to. Unfortunately, once the parent and daughter are deceased no one can say or do anything regarding the son-in-law's decisions to spend the money. In many cases the son-in-law squanders the money on a shiny new sports car, a shiny new girlfriend, or even worse they get married. In the last case, the grandchildren's new step-mom will probably be very appreciative of the "free" inheritance when she wants to take a trip to Cancun to get away from her pesky step-children.

Trust are like Buckets

Rather than leaving assets outright to children, where they are unprotected against mistakes and bad choices, the flow of inheritance can be controlled and protected through separate sub-trusts for each child. Think of each sub-trust as a bucket filled with cash. Each child/beneficiary gets their own bucket and each bucket can have different rules in how the cash is released through the "spigot." For immature children (or grandchildren) who should not make their own financial decisions, a person other than the beneficiary is in charge (called the Trustee). The

Trustee can open the spigot a little or a lot, based on their judgment and/or the rules created in the trust. An age can even be designated when the child gets to take control of their own spigot and decide how much to take out of the bucket. This type of estate plan can control the flow of assets at the death of a child directly down to their children and descendants, rather than leave the possibility of the son-in-law or daughter-in-law receiving the assets.

Divorces, Lawsuits and Special Needs, Oh My!

Society has grown to accept the norm that one out of every two marriages will end in divorce. With this staggering figure, it is even more important to note that leaving assets in trusts for children can shelter and separate inheritances from a divorcing spouse. Assets left in trust for the benefit of a son/daughter, are still immediately accessible by the child, but at the same time are not countable as marital assets in a divorce proceeding.

Although divorce and son/daughter-in-laws are common fears that should be evaluated in designing an estate plan, there are other circumstantial protections that can also be given to beneficiaries. Estate plans involving trusts can be structured to ensure that an inheritance is still available to children that are being sued or have a high probability of being sued, like physicians and other medical professionals. In addition, trust based estate planning can provide sheltering of assets for those that need it most, namely any beneficiaries who are receiving needs-based government benefits, such as Medicaid or SSI. If the assets are distributed outright to these beneficiaries, they will likely be disqualified from their government benefits or have to spend down the inheritance to maintain their benefits.

Conclusion

The decisions regarding the right type of estate plan for an individual are driven by the concerns and goals of the individual and should only be attempted with the experienced guidance of the appropriate financial, legal and tax advisors. The attorneys at Johnson, Gasink & Baxter, LLP routinely discuss different protection strategies and the numerous estate plan variations available to not only protect the client but also the client's family. The numerous considerations and goals that are evaluated in every client meeting always result in a custom tailored estate plan for the client and their family.



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About the Author:

Spencer Baxter is an experienced problem solver who helps individuals and businesses achieve and protect their goals of prosperity, stability and growth through appropriate planning. Spencer takes great pride in making sure that his work for clients is always reliable, correct, and on time.

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