The 100-Year Estate Plan

Here are some of the key issues to consider when creating an estate plan for multiple generations. BY TIMOTHY LAPPEN

WE ARE IN ONE OF THE TOP ALL-TIME years for clients to consider estate planning, with the apparently expiring $5 million (now $5,120,000) estate tax exemption, the threatened disallowance of discounts and other possible changes in the law and the economy that would make certain planning opportunities far less valuable in future years.

Therefore, this may be a good time to consider the experience of one of our clients who wanted a 100-year estate plan for multiple generations of the lineal descendants of the family's patriarch and matriarch. (Certain nonessential facts were changed for this article to hide the family's identity.)

As with many of our clients' families, there was a clear wealth generator in this family, whom I will call G1 (Generation 1, or the first generation of this family to have significant wealth). We were dealing with a member of the second generation (G2) who, as is often the case, was the family member who runs the family office. There were three other G2s and, at one point, all four had similar wealth as they each had inherited one-fourth of their parents' assets. Because the G2s had roughly equal net worth, one initial goal was to maintain that equality for their generation's lives as well as during the lives of future generations—that is, so that first cousins would have similar net worth, as would second cousins and so forth. There were some inherent challenges in such a plan:

1. Simple math. There were four G2s and they had eight children. One had one child, two had two children and one had three children. The question then became, is the family trying to keep each member of G3 on par with one another? Trying to keep eight members of the third generation financially equal was mathematically, not to mention financially, challenging and would require the G2 parents to transfer wealth among themselves to make things equal among the G3 generation. The issue was whether a G2 sibling would be rewarded or penalized for the number of children he or she had.

2. Timing. Assuming the goal was financial equality within each generation, at what point would that equality be measured? Would it be when an older generation (G2 in this case) decided not to have any more children? If so, would they give written notice to the family, saying, "Hey, we're done"? Or would the clock start ticking when the first or the last member of the older generation passed away? What would happen when a member of the older generation divorced and remarried either a younger spouse or one who already has children? Do stepchildren get counted? Snapshots work well as a time marker in family photo albums, but trying to create a snapshot for deciding on a family's wealth distribution can create unintended consequences.

3. Communism? Socialism? Disincentivism? Does giving each child of a generation ensured financial parity with his siblings and/or cousins remove incentive for the child to work hard? Conversely, what's the downside of "swinging for the fences" with an investment if both the gains and the losses will be averaged out among many? Waiters may find the pooling of tips to be acceptable, but pooling assets among a family's younger generation could act as a disincentive for creating more wealth.

4. Taxes. If the amount of assets to be transferred was relatively small, the plan could be implemented by using the annual $13,000 gift exclusion. But in families where there is significant wealth, such periodic "evening up" would at a minimum create gift-tax liabilities.

After considering the above as well as other issues, the family and we agreed upon a hybrid plan that combined both traditional and customized estate-planning techniques.

It was decided that the plan would follow a traditional course in that there would be no equalizing of wealth among siblings or cousins. If a member of the second generation was more financially successful than his siblings, so be it. And if a third-generation member were to become more or less successful than his siblings, there would be no equalizing done in the future.

> **Assuming the goal was financial equality** within each generation, at what point would that equality be measured? Would it be when an older generation decided not to have more children?

The family also spent a tremendous amount of time establishing its core values, deciding on three core principles: Every lineal descendent would be entitled to 1) a college-level education; 2) medical care; and 3) access to necessary funds to live within an hour's travel time of other lineal descendants.

To achieve these three goals, the family set up several "pots" of money, each of which would be available to a lineal descendant for one of the three core principles. If a member of the family needed funds for one of the three reasons, he would apply to the family council.

In the case of college funding, the funding could be parceled out as a grant or a loan, or a combination of the two. The final breakdown would depend upon the cost of the education, the applicant's assets and the applicant's educational prospects.

If the request was for funds to cover medical care, among the factors would be whether the proposed procedure was elective or necessary and whether insurance could cover the costs.

Members of the family were also allowed to apply to the council for housing assistance to meet the goal of living within proximity to other lineal descendants.

The idea behind using three separate funds for buttressing the family's core values was that it would allow the family council to prioritize the use of the funds. For example, it was soon discovered that access to medical care was the top concern for family members, so funding for that mission was increased.

Finally, one cannot discuss long-term estate planning without mentioning what every law student has studied since the Middle Ages: the rule against perpetuities. Basically, the rule prohibits the "dead hand" or "mortmain" control of assets long after a person has passed away. Frequently, such rules are written so that when someone sets up a document for the future control of assets, it must expire within a certain number of years (commonly 21 years) beyond the life of someone living on the day when that grantor dies. Some states (such as South Dakota) have eliminated such rules, but a 100-year plan does not trigger such concerns. PW

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