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Focus

Estate Planning Peacemakers

by Nancy Opiela

“All happy families resemble one another, but each unhappy family is unhappy in its own way.” The memorable first line of Leo Tolstoy’s [Anna Karenina](#) could also apply to financial planners commenting on the relationship between their clients and their heirs where the potential for trouble is great and varied. In talking to planners, however, themes arise that stretch across generations and socio-economic lines. Here, planners active in estate planning share stories and offer strategies to deal with the most common stresses in family relationships, from struggles over the family business to problems with second marriages.

The Family-Owned Business

If there’s a blanket statement to describe relationships around a family business, it’s that there’s great potential for normal conflicts between parents and children to be magnified. Says Carolyn Lloyd-Cohen, CLU, ChFC, AEP, of Lloyd-Cohen Associates in Clifton, New Jersey: “On the one hand, there is the family. On the other hand, they have a business. It’s impossible to totally separate the two. Just the admission of that is important. When it comes to what’s good for the family or good for the business, it doesn’t have to be an either/or situation. Maybe there’s a compromise that will work.”

Compromise is difficult, of course, when situations arise such as David R. Breuer, CFP®, describes. Says Breuer, of Compass Financial Advisors in Elkhart, Indiana: “We had a mom, who owned the business, leave on vacation. When she returned, she found that her oldest son had attempted to move his division’s corporate office an hour away. He did not like the fact he would have to “share” the business with his ‘golfing brother’ and ‘no-good sister.’”

Steve Merdinger, CFP®, ChFC, of Financial Strategy Network in Chicago, Illinois, describes another situation in which the father sold the family business to the kids. Due to a poor decision as to which child would have the control, the business almost failed. The father had to come back into the mix, restructure the whole program, and fire one of his children.

These planners agree that these sorts of problems surface from a lack of communication. Under that umbrella, Merdinger notes that there are two main problems. First, the founder hasn’t talked to the children to give them an idea of when they will get control of the business. Second, the parents don’t turn over responsibility to the next generation early enough so the children can build their own expertise to run the business.

Explains Merdinger: “Waiting to turn over responsibility prevents the next generation from being empowered to run the company. They have no authority and that leads to frustration. In addition, they aren’t building the needed relationships with banks, suppliers and vendors to keep the business successful in the future. We encourage our clients to bring the kids in sooner rather than later, so if there is an issue or problem, the parents have time to help their children learn. The reality is that something can happen to take the founder out of the equation before he or she plans and the kids should be prepared to step into the founder’s shoes.”

Another dynamic that causes a rift in families is when one child is involved in the family business and the other isn’t. Here, planners say initial conversations should focus on whether the client wants the non-participating child to participate in the business’ growth and profitability. Because

many clients agree that dividing the business equally in this situation isn't fair, planners often construct ways to leave uninherited children other assets. Says Merdinger, "The worst thing to do is assume that the kids are going to figure it out on their own. That is a recipe for future disaster."

To keep the family posted on an evolving business game plan, Merdinger advocates periodic family meetings. "I tell clients that regular meetings enhance the ability for the next generation to succeed and promote good relationships between siblings," he says.

Adds Lloyd-Cohen, "Family businesses require that the succession planning be done before estate planning because the business value is often so tied in with the founder's relationships. Inequalities in succession planning may suggest different estate planning strategies. Fairness is in the eye of the beholder, but some of the financial fairness can be handled with other assets or life insurance. Here, communication is vitally important—not only between founder and children but also among siblings."

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To promote these discussions, Lloyd-Cohen uses a multiple-choice questionnaire to help business owners evaluate a range of emotional and psychological issues in addition to business issues. "It's multiple choice, so they have to think, but they don't have to create," she says. "With the questionnaire complete, we speak not only with the founder, but with the son or daughter who may be in the business. They often have a valuable perspective of what's going on with the business that we can later mention to the founder. Often, he or she may receive the information better because it isn't coming from the son or daughter."

Lloyd-Cohen also advises clients to make business decisions with their "business owner hat on, not their Mom or Dad hat. I know of a family-business owner whose son was not carrying his weight in the business. They had spoken with him about it numerous times, yet still he was not living up to the requirements of the job. His dad took him into his office. He first put on a hat with the word 'boss' on it and told his son that, unfortunately, he was going to have to let him go. The father then took that hat off and put on a hat with 'Dad' on it, put his arm around his son and said, 'I understand you have just lost your job. Is there anything your mother and I can do to help?'"

Is Equal Fair?

Hillel Katzeff, CFP®, of HK Financial Inc. in San Diego, California, describes a familiar struggle concerning a physician client: "One son and his wife are physicians. On the other side, his daughter is a reporter and her husband is a librarian. They are all lovely people, but in very different socio-economic places. My clients wanted to treat their children equally, but they were concerned whether that was fair."

Katzeff's solution was to bypass the children and set up appropriate trusts to fund the grandchildren's education. "We reassured both children of the intentions of the parents to be fair and equal. I find it's best for clients to be as open as possible and tell their children what they can expect," Katzeff notes.

Other conflicts surface between parents and their children when parents want their unmarried children to have a prenuptial agreement in place. Lloyd-Cohen notes that this is particularly true when family businesses are involved. She notes, "One way to honor the parents' wishes and to ensure less conflict between the child and future spouse is to require a prenuptial agreement or be written out of the will. That enables the child to say, 'Honey, we have to do this, even though we love each other.' Of course, it rarely happens that the child would be written out of the will."

The real purpose of a statement like that is not to hurt the kids, but to provide a little diplomacy for the daughter or son to speak to the future spouse who thinks they don't love them if they make them sign a prenuptial agreement."

Other parents choose incentive trusts to encourage particular behavior in children, such as going to college. "I think it's imperative that parents communicate their values to children," says Lloyd-Cohen. "Part of my function is to facilitate that communication. Whether or not they sit down and discuss the will, it's important for the kids to understand that, for example, their parents hold education in such high esteem. That way, you're less likely to end up with rebellious kids."

From Second Marriage to the Alpha Sibling

Thomas Cooper, CFP®, of Financial Alternatives Inc. in Lanoka Harbor, New Jersey, has had a number of situations where family problems were rooted in poor planning around a second marriage. He offers the following example: "Two newlyweds each own a home and sell them both, purchasing one much larger house. That new home is then bequeathed to the surviving spouse and children. Yet, if there are any children from first marriages, they will be deprived of a legacy from that first marriage."

Cooper also notes that the surviving spouse is often amazed to discover that no changes were ever made to IRA beneficiaries. "Although there's been a second marriage, the first spouse, children from the first marriage or siblings are often listed as the IRA beneficiary," he says.

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-Celia Ray Hayhoe, CFP®

Accordingly, Cooper insists that all clients marrying for a second time sit down and review their beneficiaries for assets that don't pass through a will. "Often we find no secondary beneficiary listed. Or sometimes a client assumes that his or her company has updated these records, but they haven't. As an employee, just because you've filled out the form, you can't assume that your company has made the change. You need to follow up and make sure everything is in place. When we review these documents, there is always a surprise, something that needs fixing."

There are also plenty of conflicts among siblings. The most common, says Bedda Emous, CFP®, of Fiduciary Solutions LLC in Andover, Massachusetts, is when the "client would like to dispose of assets between siblings and the Alpha sibling convinces the client to gift property before death or name him or her as testamentary fiduciary to the detriment of the other heirs."

Adds Cooper, "One client had inherited \$2 million worth of stock from his wife. After his wife's death, one of his sisters drew closer and closer, coaching her brother into some unusual gifting. She convinced the client, who had terminal cancer, to gift \$625,000 to each of his three sisters. The sister blew up the estate plan that was already in place because she wanted the money right away."

The Family Meeting

Increasingly, planners are offering to host a family meeting to resolve conflicts such as these. The meetings' moods range, says Breuer, from a "laughing good time to a situation where siblings push each other."

Celia Ray Hayhoe, CFP®, in Blacksburg, Virginia, says one way to broach the subject of a meeting with family members is to stress the need to plan for the client's long-term care. "People

don't want to talk about estate planning because that means they are going to die," she says. "But we can back into the discussion through the long-term care question. It's very important that a family decide who the caregiver might be and prepare financially for that person to assume the role."

Hayhoe has had the best success organizing a family meeting around another family occasion, although she has also conducted the meeting via conference call. "Family meetings don't have to be perfect," she notes. "It's important to do as much as you can with the family members you can reach and the client will be better off. There's always someone in the family who doesn't want to deal with it."

Hayhoe notes that often it's necessary to have a "venting session" before the "practical session." She explains, "In any meeting, family members must start out by saying three things they like about the person before they are allowed to vent. We cool down the same way. Family members have to say three nice things about the person and thank them for participating in the discussion."

Hayhoe says the meeting's success depends largely on the foundation already in place. "Some people have always talked to their kids. Others talk to them only when there's a crisis," she notes.

To aid communication between her clients and their heirs, Paula F. de Vos, CFP®, president of Catalyst Wealth Management LLC in Carmel, California, advocates values-based estate planning where the focus is not only on tax-effective planning. Here, strong intergenerational communication is the foundation for "opportunities not only for furthering the wishes and objectives of the first generation, but providing the ability and means to develop comprehensive 'family objectives' that are achieved across multi-generations."

Continues de Vos, "With family meetings, there is less opportunity for disagreement later on. And if there is a disagreement, there's an open forum to discuss issues without animosity."

In addition to the family meeting, de Vos notes that some families choose to run weekend-long retreats. Others choose to draft a "family wealth letter of intent" as a way of sharing personal history and values.

Says Bobbie Munroe, CFP®, of Fraser Financial in Atlanta, Georgia: "You lose so much by not having open discussions with your heirs. What you get without communication is a family suing each other when there could have been some reconciliation before the parent died. I believe that if you can't get personal with your clients, you don't stand a chance in helping them, so I see it as my job to tackle these family issues. However, I understand that some planners and some clients don't want to go there."

To assist her young clients in building a foundation for communicating with their children, Munroe suggests that her clients produce a DVD addressing their family history and personal beliefs. "To avoid conflict in the family later on, it's important to bring children up so they understand their role in the family and what the family values," she notes.

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-Carolyn Lloyd-Cohen, CLU, ChFC, AEP

In an interesting twist on the family meeting to help communication between the generations, Katzeff has hosted family parties. He explains, "One couple I work with, the husband turned 65 this year and his wife will be 65 next year. So I suggested getting the entire family together for a birthday party. The children are my clients, too, but we'll have the entire clan—sons, daughters, sons- and daughters-in-law, grandchildren and great-grandchildren. My clients were pleasantly

surprised by my offer and said, 'You don't have to do that. It's a lot of money.' My response was, 'It's my pleasure. It's a wonderful occasion to get your children and grandchildren together. How often do you get an opportunity like this?' The upshot is that we'll go to a nice restaurant and have a really meaningful family gathering."

On the other side of the family meeting issue, Phillip Banks, CFP®, CTFA, of Banks and Banks Fiduciary Services in La Mesa, California, cautions planners about having clients and their heirs sitting across a table. "It's a double-edged sword to bring the kids in," he says. "Sure, there are a lot of nice families, but if the kids see money going to the charities, not to them, suddenly that's not a good idea. The key from the planner's standpoint is to place the client's interests first and not be concerned about the children unless, of course, the client asks to include children in estate planning discussions."

Common Sense for Common Stresses

As Tolstoy observed, every family has its unique problems. Yet, if there's a common thread planners need to keep in mind, it's that it doesn't take a lot of money to cause problems with heirs, just a conflict of expectations. And although most planners' first step in the estate planning process is to bring in a qualified attorney, ironically, it's rarely a tax issue that will cause the family rift. And as essential as the sophisticated estate planning strategies are, it's good, old-fashioned common sense that will solve the family conflicts.

First and foremost, it's essential to remember that it is the client for whom you work, and therefore their goals and objectives that you must implement. If the kids perceive Mom as spending a portion of their future inheritance on something that is not a necessity, planners can support the client and help educate the children on their mother's point of view. Naturally, some planners feel comfortable playing the role of family mediator and others don't—and it's important not to accept a role you are uncomfortable with when outside counseling help is available.

Bedda Emous encourages planners to talk to their clients about potential conflicts between their children. "Often, I'll see that a client has a blind eye to potential conflicts among their kids and I think it's my job to broach the subject, although it's rare you change the client's mind about their children."

Conflict resolution is a process, says Emous, and planners shouldn't expect everything to be resolved in one meeting. A key to success, she says, is a "third party asking questions in a very gentle way." She notes, "There's a danger in being too formal like a lawyer or mediator, but if we aren't formal enough, issues don't come up and you don't move anywhere."

Adds Carolyn Lloyd-Cohen about family conversations: "Progress is incremental and each positive step among family members needs to be acknowledged and celebrated. In the end, however, it's important not to see yourself as a miracle worker. Sometimes you have to walk away and let your clients work on their issues on their own."

It's also important to make room for creative solutions to conflicts, from bringing in a psychologist to "casting lots for the 1968 convertible." Explains David Breuer, "In one situation, the children and grandchildren were jockeying for the car and the tension was really bothering my client. We dealt with the conflict with a strategy I learned from my grandfather. My client stipulated in his will that upon his death, any heir interested in the car could submit their name and the family minister would draw the winner. We avoided hurt feelings because we stressed, up front, the client's desire to be fair."

Finally, Phillip Banks suggests an idea planners should consider that may help the family avoid future conflict. He believes the root of many conflicts is that heirs often have a "sense of

entitlement and expectation.” He concludes, “Planners should start early with their younger clients to help them teach self-reliance and responsibility to their children. Those are qualities that are best taught early by the parents, not later by a planner or fiduciary.”

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