

A Personalized Estate Plan

In last month's article, I introduced the idea of a personalized estate plan versus a packaged estate plan. I understand that a packaged set of documents including a will and a trust can be purchased for about \$500. There are a number of problems with purchasing such a plan. First, the plan may not work in your jurisdiction. The distribution of property is governed by state law; thus, documents that work efficiently and effectively in Massachusetts may not do so in New Hampshire.

The second problem with packaged estate plans is that they are created without dialogue. One can be lead through a series of questions to find out the factual circumstances, but without true dialogue, one can never obtain a tailor fit estate plan. Attorneys that practice extensively in this area listen to clients and ask questions to custom fit an estate plan.

I recently met with new clients who I will call the Smiths. They have a long term marriage with three children, each biologically their own. Their son is married with children of his own. One daughter is unmarried and not likely to marry or have children. The third daughter is divorced without children but has a life partner. Based on these facts, a typical packaged estate plan might provide for three shares to be created following the death of the survivor of the parents and those shares to be distributed over the life of each child to that child and/or that child's issue.

Such a plan would be ineffective for the Smiths. It may work fine for the son. His share would be there for him and his children, but the plan would not work for the daughters. The first daughter is likely to be alone for the remainder of her life and not likely to be survived by issue. The second daughter is also not likely to be survived by issue but has a life partner.

True dialogue is necessary with the Smiths to examine whether the trustees of the share for the first daughter should be more liberal in making distributions from her share than from the share for the son because she is not likely to have issue. True dialogue is also necessary to examine whether the second daughter's life partner should be included as a beneficiary; thus it is necessary to understand the term and commitment of the relationship of the second daughter and her partner. Certainly the Smiths do not want the partner to be a beneficiary if she has a falling out with the their daughter, but, on the other hand, so long as they are together at the second daughter's death, perhaps the partner should be a beneficiary.

True dialogue will produce a tailor fit estate plan for the Smiths. Packaged plans seem to only work in the "vanilla" situation, but I have experienced few truly vanilla situations. When a qualified attorney scratches the surface, unique family wrinkles surface that require specific attention. Perhaps there is a child that is "not good with money" or an ill child or an undesirable in-law. Unique family circumstances also come in the form of property. A family business or a vacation home can make planning very difficult when there is more than one child.

Overall, in estate planning, you often get what you pay for. If you do not want to pay anything, you can get your state legislature's estate plan. If you want to pay a little, you can get a packaged plan. If you want to pay more, you can get a custom fit estate plan designed to meet your objectives. Often, the custom fit plans are much more efficient from an estate administration and tax standpoint making them the least costly plans in the end. In the end, it is of course your decision if you choose to make it.

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