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Consider a custom trust

Estate-Plan Edge

By CURT FERGUSON

As I work with farm families, the most obvious inequality issue is how to treat the farming child fairly as compared to those who left for other careers. Fairness may require that we protect the farming heir because he or she sacrificed other options and went through hard times to help make the farm what it is.

But let's consider a different kind of inequality. Ron Blue in his book, "Splitting Heirs," says, "The greatest inequality is treating unequal people equally." He also writes, "If you pass wisdom to your children, you probably can pass wealth to them. If they have enough wisdom, then they may not need your wealth. [But the] worst thing you can do is to pass wealth if you haven't passed wisdom."

Assume you have 600 acres of prime farmland to leave equally to three nonfarming children. Dave is a physician's assistant, has three children by his every-thing-you-could-ever-hope-for-in-a-daughter-in-law wife, and you know they have accumulated substantial savings. If anyone has inherited your best wisdom, it is Dave.

Your second child, Emma, is as sweet as can be. Her husband is a spender and a bit domineering. Their kids seem to be doing OK, but you often ask her "how's it going?" because you're always a bit worried about her.

Then there is Frank, your youngest. Simply put, Frank is divorced — twice, so far — has one teenage daughter, and has battled substance abuse issues off and on for most of his adult life. He is clean today, and you are optimistic.

Tailor your plan

If you love your children equally, and care about their well being, I suggest that you must tailor their inheritance to their unequal stations in life. How?

You thoughtfully develop an estate plan. Your living trust provides that upon your death, three separate trusts are created, each to hold 200 acres. We will call them Trust D, Trust E and Trust F for Dave, Emma and Frank.

Custom protection

Why even bother leaving Dave's 200 acres in a trust? Trust D can protect against two primary threats. First, being successful in his own right, Dave may have an estate tax problem when he dies. Trust D can assure that the 200 acres will not increase Dave's taxable estate. Second, Dave is always going to be vulnerable to a lawsuit. His profession carries special lawsuit risk, of course, but like all of us, he could be sued if he has a traffic accident. Trust D would protect the 200 acres from these lawsuits.

Trust D would be designed to keep Dave in control. You name him as the trustee, and as such he can have unlimited power to buy, sell and reinvest. Whatever assets are in Trust D remain protected (even if he sells the land and reinvests in something else). Trust D allows Dave to withdraw any of the income (rent, interest, etc.) he wants.

He appoints a friend as co-trustee of Trust D, and the two of them (he and his co-trustee) distribute to Dave any principal (assets) that he needs. Whatever income and principal accumulate in Trust D stay protected and available for his "rainy day" or to pass on as he directs at his death.

Trust E is similar for Emma. It will protect the assets from future estate taxes and a lawsuit. She may have the right to withdraw any of the income she wants. But the influence of her husband is an extra concern for you, so an important difference is the trusteeship. You name Emma as a trustee of Trust E, but name a CPA as her co-trustee, and require that if the CPA stops serving, a bank will serve instead. All decisions about investments and about how much principal will be distributed — i.e., how much principal does Emma need to live comfortably? — must be approved by the CPA or bank trustee. This helps insulate Emma from pressure by her husband to deplete Trust E.

Trust F is quite different. You want it to help Frank and not hurt him. The 200 acres in Trust F will be managed by Smalltown Bank & Trust as trustee. The bank must distribute income and principal as needed to provide for Frank's daughter and to help Frank. The trustee is to give Frank more money for discretionary spending while he is drug-free. If he relapses, provide counseling and rehab but don't let him directly receive any money to misuse.

Each of the unequal children inherits 200 acres. But with careful planning, you maximize the positive impact it will have on each one.

Ask the expert

Curt Ferguson, an attorney, helps farm families protect and pass on what they value. He owns The Estate Planning Center in Salem. Learn more on his website: *www.thefarmersestateplanningattorneys.com*.