

Dealing with Difficult Beneficiaries

By Carla Wigen

Every family is full of personalities and presumptions. When those conflict, it can create challenges.

Individuals and families create estate plans with the best intentions. The issue is that those intentions may not match the expectations of others. One family member may feel that he or she provided more emotional and practical support to an aging parent and that should be recognized. Others may consider themselves the most financially responsible, so it would be only natural that managing the family's future financial affairs would fall to them.

Family dynamics are complex, and for families of significant wealth, even more so. Financial assets, real property, business ownership and operations, foundations, philanthropy and trusts may all be at play, not to mention the personal perceptions everyone has about their contributions to the family's success, or their rights to its future.

And, of course, there are financial aspects to estate planning that can't be overlooked, as the goal is to maximize the immediate and long-term value of the estate, reduce taxes and keep expenses at bay.

There are different strategies to account for different issues, and it's much better to discuss, plan and resolve them early than to leave it to an estate executor to figure out.

But, at the risk of oversimplifying, the primary reasons beneficiaries can be difficult are personal.

Some beneficiaries may be surprised at who is named the executor or trustee. This is particularly the case when it's a family member rather than a professional, such as an attorney or wealth manager. Sibling rivalries, the dynamics of extended families and the relationships with step parents, to name just a few, can all create complications.

Others may not understand, or may just disagree with, the distribution plan. A change in life circumstances – a new romantic partner, behaviors of children, increased involvement with a charitable cause – may cause a shift in distribution that family members aren't aware of. Some estate plans include uneven distribution among beneficiaries, which may lead to confusion and ill will among, for example, children who expected an equal share.

How distributions are structured, such as including restrictions based on age or other individually designated milestones, can also create tension, as they may feel limiting, unnecessary or unfair to beneficiaries. However, good reasons for these structures may exist. Reducing future conflict among beneficiaries takes a combination of careful planning, professional communication and structural tools, all working together to protect the long-term value of an estate.

If an estate plan is to be designed with the best intentions, it makes sense to take the time to be meticulous in how it's structured and drafted. Planners will often recommend a separate personal letter to better explain thoughts and intentions that shouldn't be in the legal documents. Adding personal thoughts and rationales for decisions about distributions may go a long way in making it better, yet inadvertent phrases left open to interpretation can make things worse.

Finally, it is important to meet regularly with attorneys, wealth managers and accountants to review the plan, confirm that it meets the intentions with which it was created and adjust it to accommodate new information. Using third party professionals to meet with beneficiaries and explain the technical details behind it can help reduce emotional conflicts.

To mitigate negative outcomes of emotional responses, consider using structural tools built into the estate plan itself. For example, “no contest” clauses – or “*in terrorem*” clauses – provide language that specifies if anyone contests a will, then they will be disinherited, or their gift reduced. Giving the beneficiary enough that it's not worth it to them to contest for a larger amount can be an effective strategy. While Washington courts have upheld these clauses, they may not be valid everywhere, which makes it critically important that they are carefully drafted to ensure the best chance of being upheld if challenged.

The most carefully written estate plan may not meet beneficiary expectations - whether financially or emotionally. Every estate and every family is likely to deal with difficult beneficiaries. Recognizing the common reasons why and carefully planning and communicating the desired outcome can ease a potentially difficult situation.

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