

Foulston Siefkin Estate Planning: ESTATE PLANNING TO PRESERVE FAMILY HARMONY

Estate planning in its broader context extends beyond the traditional confines of providing for the investment, management, and disposition of assets in the event of the owner's disability or death. Estate planning includes preservation of family values and traditions, not the least of which is family harmony.

Family relationships that are particularly vulnerable in the estate planning process are those between a parent and adult children, a step-parent and adult step-children, adult children and adult step-children, and among adult children. Such relationships are at risk not only in the implementation phase of the estate plan following a parent's or step-parent's disability or death, but also if a parent chooses to seek the input in the development of the estate plan or inform other family members of plan aspects following its completion. Spousal disharmony is an infrequent casualty of the estate planning process. Although married persons typically come from different perspectives, they nonetheless are inclined to discuss and ultimately agree on the appropriate estate plan.

When asked, most parents and married persons planning their estates are quick to confirm that they place a higher value on the preservation of family harmony than on the amount of worldly possessions they pass on to family members following their death. Yet, paradoxically, most estate planning attorneys historically seem to have devoted little more than a modicum of attention to this issue when counseling clients or drafting estate planning documents. Instead, the focus has been on reducing taxes, reducing administrative costs that can occur in probate, naming the fiduciary to manage the client's affairs and personal care in the event of a disability, and providing for the disposition of the client's estate to the parties the client intends. Emblematic of this oversight of family harmony is the lack of estate planning seminars, textbooks, treatises, and articles that even address this issue, let alone that give the topic any extended discussion.

It is as if the family harmony aspect of estate planning is of little importance to clients, not technical enough to be worthy of discussion in learned estate planning publications and seminar presentations, or strictly a family issue more properly suited to family counselors than estate planning attorneys. Nothing could be further from the truth. This failure of estate planning attorneys to focus on family harmony issues is understandable. The estate planning attorney's education, training, and mindset is geared to a focus on the more technical estate planning aspects. Nonetheless, this oversight undoubtedly has been a major factor in the prevalence of disharmonious situations occurring among the family members of their clients in the planning, family discussion, and implementation phases of the estate planning process.

FOULSTON SIEFKIN LLP'S FAMILY HARMONY PHILOSOPHY

After much thought and analysis, the Estate Planning Practice Group of Foulston Siefkin LLP concluded that adhering to this traditional approach was not in the best interests of our clients. We thus designed and implemented a very bold program, one which we believe to be one of the most sophisticated and comprehensive in the country, emphasizing and being proactive in those factors and strategies in the estate planning process that are conducive to the preservation of family harmony. By so doing, we were convinced that we would not only be fostering family harmony, but also the traditional estate planning goals of maximizing the amount of assets passing to family members in the desired manner. This is because family discord can significantly increase the legal fees and other costs of administering a trust or estate, thereby commensurately reducing the amount of assets passing to family members following a parent's death. It can also severely damage the integrity of the estate plan by skewing the intended disposition of estate or trust assets among family members.

The factors and strategies involved in the estate planning process that can impact upon family harmony and upon which we focus are many. Examples include:

- (a) Counseling clients on the proper person, persons or entity to serve as financial fiduciary (executor, trustee or agent under a financial power of attorney);
- (b) Advising clients on the proper person or persons to serve as health care fiduciary (agent under a health care power of attorney);
- (c) Counseling clients on the family harmony issues attendant to the passing of farms and closely-held businesses to descendants;
- (d) Including provisions in wills, revocable trusts, and financial powers of attorney regarding the management of property and its disposition among descendants which are designed to minimize the risk of family controversies;
- (e) Including provisions in health care powers of attorney and living wills which are designed to minimize the risk of family controversies;
- (f) Dealing with property that might pass outside the provisions of a will or revocable trust through joint tenancy or beneficiary designations by including proper adjustment provisions ensuring such passage does not cause an unintended distortion of the estate plan and family controversies;
- (g) Addressing the potential impact of gifts and loans to descendants on the disposition of property passing under the provisions of a will or revocable trust so as to avoid a distortion of the intended disposition of the client's estate or trust estate and family disharmony regarding a parent's intent;
- (h) Specifying in wills or revocable trusts as to whether any services that a family member might provide are intended to be compensated;
- (i) Including provisions in a will or revocable trust outlining the client's reasons for including certain estate planning provisions in order to avoid any misinterpretation as to the client's intent;
- (j) Including mediation and arbitration provisions in wills and revocable trusts where desirable to provide a family friendly forum for resolving disagreements, avoiding public judicial litigation, reducing administrative costs, and enhancing the prospects of family harmony;
- (k) Including well-drafted in terrorem or "no contest" clauses where desirable to minimize the risk of unwarranted challenges by family members to the estate plan;
- (l) Specifying whether wills or revocable trusts executed by spouses and which are similar in their provisions are contractual (unchangeable by the surviving spouse in some or all respects) or non-contractual to minimize the potential for controversies should a surviving spouse change the estate plan; and
- (m) Counseling clients on whether it is desirable to involve their children in the designing of their estate plan or the explanation of its aspects.

In short, our Estate Planning Practice Group came to the conclusion that nothing less than a sea change in traditional estate planning approaches was warranted. We believe estate planning legal counsel should embrace a holistic approach to their practice, emphasizing "preventive legal medicine" regarding family harmony issues in the same way a proactive stance regarding individual health has evolved in the medical field. It is thus incumbent that estate planning attorneys adequately inform clients of the impact various estate planning strategies and decisions can have on family harmony. It is equally important for estate planning attorneys to include carefully crafted provisions in testamentary instruments which both anticipate and avoid frequently occurring disharmonious family circumstances that can erode the value of the estate or trust and severely damage the integrity of the estate plan.

INCORPORATION OF FAMILY HARMONY STRATEGIES

Accommodating such a major shift in the traditional estate planning paradigm poses a challenge to both the efforts and the professional objectivity of estate planning attorneys, but one we were glad to accept. The structure and substantive provisions of testamentary instruments were appropriately revised to reflect this emphasis. Properly advising clients of strategies enhancing family harmony required much more than a nominal time investment on our part and often disabused clients of their preconceptions which otherwise favored a greater compensatory role for legal counsel in the operational phases of the estate plan following a client's disability or death.

CONCLUSION

Notwithstanding the substantial additional time investment required to modify estate planning documents to incorporate family harmony strategies and render objective family harmony counseling, the experience of our Estate Planning Practice Group is that the practice of holistic family harmony strategies will enhance the professional reputation of attorneys who do so and provide much personal gratification in having furthered this normally penultimate client objective. Based on our experience, clients who are the recipients of these family harmony strategies are also normally highly appreciative of the attorney's professional objectivity and tend to derive a much greater level of satisfaction with the entire estate planning experience.

Although it is difficult to quantify the benefits of this family harmony emphasis with certainty, our Estate Planning Practice Group estimates that approximately three-fourths of the frequent family controversies among children and their spouses which now frequently arise surrounding the management of a parent's financial or health affairs following a parent's disability or death would have been avoided had this deliberate and measured family harmony approach been utilized throughout the parent's estate planning process.

A member of our Estate Planning Practice Group, Tim O'Sullivan, has authored one of the first articles for attorneys on this important subject. His article, titled "Family Harmony: An All Too Frequent Casualty of the Estate Planning Process," was published in the Elder's Advisor, a publication of Marquette University School of Law in Milwaukee, Wisconsin, in its Spring 2007 issue. The above and other family harmony issues are discussed therein. You can read Mr. O'Sullivan's article by clicking [here](#).

FOULSTON SIEFKIN'S ESTATE PLANNING AND PROBATE GROUP

Foulston Siefkin LLP, the largest Kansas law firm having offices exclusively in the state of Kansas, has more than 90 attorneys and is headquartered in Wichita, Kansas. The firm has additional offices in Kansas City and Topeka. The firm's Estate Planning and Probate Practice Group consists of eleven attorneys who collectively practice in all significant estate planning, probate and trust areas.

The estate planning law summary above was authored by the firm's Estate Planning and Probate Practice Group. Provided as a service to viewers, it is intended to be a general discussion of one of the Group's major areas of emphasis, estate planning strategies to preserve family harmony. However, the strategies discussed therein are not designed to be an exhaustive discussion of all asset protection strategies or even any one strategy. Moreover, they are subject to exceptions for which space did not permit a discussion, often are Kansas law specific, and are subject to varying and changing federal and state laws which may alter or diminish their efficacy. This document has been prepared by Foulston Siefkin for informational purposes only and is not a legal opinion, does not provide legal advice for any purpose, and neither creates nor constitutes evidence of an attorney-client relationship.

Viewers can click [here](#) for information on the Group's practice areas and attorneys, law summaries of estate planning areas, regional and national estate planning articles authored by Group attorneys, related links and other estate planning information which may be of interest. There is also a link to an article on family harmony estate planning strategies authored by Tim O'Sullivan, an attorney in Foulston Siefkin's Estate Planning and Probate Practice Group. Published in May of 2007 by The Elder Law Advisor, a publication of Marquette University School of Law in Milwaukee, Wisconsin, this article is one of the most comprehensive articles on this subject ever written for estate planning attorneys.

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FOR FURTHER INFORMATION

Foulston Siefkin regularly counsels clients on issues relating to Estate Planning and Probate. If you are interested in additional information regarding these matters, please visit our website at www.foulston.com or if you would like to discuss specific ways in which Foulston Siefkin can help you, contact **Tim O'Sullivan** at 316.291.9564, or at tosullivan@foulston.com or **Stewart Weaver** at 316.291.9736, or at sweaver@foulston.com.

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To view Foulston Siefkin's Estate Planning website please click [here](#).