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**Two Family Estate Plans:**

**Which Plan Do You Want for Your Family?**

**Part 1 of 2**

**Henry and Nancy Adrift: A Typical (non) Estate Plan:**

Henry and Nancy Adrift have been married for 41 years. They have two adult children, Scott Well-Grounded and Sally Flighty-and-Shiftless. Thirty years ago, when their children were young, Henry and Nancy hired Larry Lawyer to prepare simple Wills and standard Powers of Attorney.

Every so often they received a letter from Larry Lawyer suggesting that they have their estate planning documents reviewed and updated. Of course, they knew this was good advice, but they were busy and never got around to it. Over time they moved, changed investments, and bought new cars. And, not surprisingly, they forgot the instructions Larry Lawyer had given them about how to title their assets so their Wills would be effective.

When Henry became ill, he could no longer manage his affairs. Immediately his family felt the burden. They wanted to follow Henry's wishes, but family members discovered that Henry left many questions unanswered. His needs increased, particularly his medical needs. But his family did not know how he wanted to be cared for, so discussions about his medical care resulted in one argument after another. They argued about whether to put Henry into a nursing home. They even argued about whether to shut off his life support. Henry could have prevented this stress and tension among his family members if he had simply made his wishes clear in his estate plan.

Henry then passed away. Nancy and her son, Scott, met with Larry Lawyer to find out what to do next. Luckily, Larry Lawyer was still in town and still practicing law, although he was certainly older and grayer than he was 30 years earlier. This was the first time Scott met him.

Because 30 years had passed, Nancy and Henry's estate plan developed a few complications. First, when Henry and Nancy signed their Wills, they had a small estate, so Larry Lawyer did not do anything to reduce estate taxes. Now, at Henry's death, their combined estate is worth more than $2,000,000 and Henry's lopsided portion exceeds $1,000,000. Henry owned stock and a modest home in Indiana, which he inherited from his parents. He owned them alone, as separate property, which meant they must go through probate. The rest of Henry's assets were owned jointly with his wife, except for his life insurance and 401(k), which named Nancy as primary beneficiary. So even if Larry Lawyer had done tax planning in their Wills, that planning would not have worked.

Then followed the probate and estate administration. Nancy and her children waited 22 months for the Court to finalize the probate. One factor that delayed the probate was the need to file an "ancillary administration", a second probate, in Indiana where Henry's real estate is located. When the estate administration finally ended, Nancy and her family had paid him $21,150 in legal fees. Plus, Nancy paid another $6,000 to the attorney in Indiana for the second probate.

Another factor that delayed things was the squabble that developed between their children, Sally Flighty-and-Shiftless and Scott Well-Grounded. When Sally turned 21, Henry said that when he died, Sally could have the grandfather clock in their living room. But Henry never added this instruction to his Will. Scott thought he was entitled to the grandfather clock because Sally was supposed to inherit the expensive china service when Nancy died. The argument between Scott and Sally grew so heated that, at one point, they each threatened to hire their own lawyers. Fortunately, Nancy was able to calm them down and negotiate an agreement. But Sally and Scott were so bitter they never spoke to each other again.

Nancy's and Henry's boiler-plate Wills contained no tax planning, so all the probate and non-probate assets went directly to Nancy. At Henry's death, she was not liable for any estate taxes. But when Nancy died, just three months later, Larry Lawyer wrote a check for $400,000 to the IRS to pay estate taxes.

After the remaining bills were paid, Larry Lawyer gave Sally and Scott their inheritances. But most of Sally's share went straight to the IRS to pay old tax bills. Sally was always too embarrassed to tell her parents about her financial problems. And, naturally, Henry and Nancy assumed she was financially successful because of her lifestyle. But things were not as they appeared.

Sadly, one of Henry and Nancy's life-long dreams was for their children to use their inheritances to make sure each of their grandchildren would go to college. That won't happen now.

Henry and Nancy never realized the many ways they could safeguard their assets while they were alive. Nor did they realize they could design a plan to pass their assets responsibly to their children, until they reached the age when they could handle their inheritance wisely. Now it's too late.

**Part 2 of 2**

**Joe and Rose Smarthinker: A Custom Estate Plan That Works…**

Joe **Smarthinker** was a good businessman. Many would call him an outstanding businessman. Part of his knowledge and experience included knowing the best ways to protect, preserve, and transfer his wealth to his family. Here's how he did it.

Joe and Rose were concerned about four major attacks on the Smarthinker wealth: lawsuits, divorce, non-descendants, and estate taxes. In addition, they wanted to keep their personal affairs private and protect the family's wealth from errors in judgment.

As a result, Joe and Rose never gave or left anything outright to their children or free from a Trust. And to make their children judgment proof, they gave and left their wealth in separate share Trusts. As each child reached a designated age, he or she could serve as co-trustee over his or her own respective share. When the child reached an older age, each child could choose his or her own co-trustees to serve with him or her.

Here are examples of how this asset protection plan safeguarded the Smarthinker's wealth.

Joe and Rose set up their Asset Protection Trusts so assets held in trust could not end up in the hands of ex-sons-in-law or ex-daughters-in-law. When their son and daughter–in-law divorced, the daughter-in-law did not get any of the Smarthinker wealth that was held in trust for their son.

Joe and Rose set up their Asset Protection Trusts so assets held in trust could not go to anyone who is not a direct Smarthinker descendant. Under ordinary circumstances, if a Smarthinker child was the first person to die in his or her marriage, the surviving spouse would receive part of the Smarthinker wealth. Then that spouse could remarry and leave the Smarthinker wealth to a new spouse. By keeping the wealth in specialized Trusts, they guaranteed that their money stayed in the hands of direct blood descendants.

Joe and Rose set up their Trusts so they would remain private by avoiding probate. Without Living Trusts, their estates and their children's estates would go through probate, which would expose their personal finances to public scrutiny. While their deaths were public matters, their estates were completely private.

Joe Smarthinker knew that all people make mistakes, especially young people, due to their lack of experience. So he set up Living Trusts for his children and chose experienced money managers and Trustees. This reduced the possibility for financial losses due to bad judgment.

Most of us don't have the assets or money that the Smarthinkers have. But you and the Smarthinkers do have something in common: You can protect your assets -- preserve your estate -- transfer property to your heirs -- and maintain a high level of financial privacy using the same sophisticated methods they use. Best of all, these estate planning and tools are available to you for a small fraction of what the cost would be to your estate if you fail to think ahead and consider utilizing these basic estate planning tools.

***Anthony J. Medico, Esq.,** has practiced law for over 27 years. To ask a question regarding this article, send an e-mail to info@medicoandassociates.com or call us at (203) 661-8151. To read more highly informative Estate Planning articles, visit our website at www.medicoandassociates.com, where you can also download our free Estate Planning Survival Guide. Enjoy.*


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