THE WALL STREET JOURNAL.
TUESDAY, AUGUST 26, 2014

Voices: Henry Klosowski, on The Hazards of Unequal Inheritance

'It is never a good idea to punish success.'

Voices is an occasional column that allows wealth managers to address issues of interest to the advisory community. Henry Klosowski is partner and chair of the trusts and estates practice group at Moritt Hock & Hamroff, a law firm with offices in Garden City, N.Y. and Manhattan.

When high-net-worth clients sit down with me to discuss distribution of their estate to their children, they sometimes believe that they might be doing the right thing by giving one child more than the other. Their son could be having money problems, for example, while their daughter is extremely successful and doesn't need as much to be comfortable. They might think that a 70/30 split favoring the son is the best way to deal with the situation.

I emphasize to these clients my strong belief that 50/50 is always the best policy. In my opinion, it is never a good idea to punish success, no matter how worthy you think your motivations are. And in today's world, a lot can change for someone in 5, 10, or 20 years. The successful child could possibly fall on difficult times, and the other child or children could start doing much better financially.

More importantly, this strategy of unequal distribution will create resentment among the children after the parents die. At the very least, the child who receives less may ask, "Why didn't mom and dad love me as much?" And if they are angry, they may lash out at the other sibling and accuse him or her of exercising undue influence over the parents as a means to challenge the will. This kind of conflict can destroy the family unit and serve as a lasting legacy of pain. No parent wants to leave their children in that kind of situation after they're gone.

The input of the financial adviser is invaluable in these situations. As the trust and estates attorney, I am sometimes a bit of a stranger to the clients until I've had a chance to work with them and gain their confidence. The adviser, on the other hand, may already be a trusted ally of the family. The adviser understands the family dynamic and the personalities involved, and can guide them toward the approach that will be in everyone's best interests over the long term.

There are ways to account for children's differing financial situations without showing obvious favoritism in the will. One approach I find useful is to create an irrevocable trust where the trustee has authority to make distributions to the children. The trustee would have discretion to consider the children's needs, and so if the parents wanted the flexibility to give more to one child who was having trouble, the trust would provide that leeway. It's a much more palatable way to help the child than having the parents make an explicitly unequal division of the assets.

In my experience, it's never a good idea for clients to split their estate on an unequal percentage basis among children. It doesn't matter what the reasoning is; the children don't understand and they can become angry and resentful. Parents would never choose that path if they understood what the ultimate outcome of their decision would be.