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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 Will 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 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



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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.

Stay tuned for part two; a very different outcome.

Anthony J. Medico, Esq., has practiced law for over 22 years. To ask a



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question for this column, or to receive Medico's free Estate Planning Survival Guide, visit his website at www.medicoandassociates.com, send an e-mail to Amedico@medicoandassociates.com or call (203) 661-8151. You can read most of his previous columns on his Greenwich Time estate planning blog on the internet. Just go to <http://www.greenwichtime.com/blogs> and scroll down until you find him under the business section. Enjoy.