

Can grandparents protect their grandkids' inheritance?

July 2019

If their kids don't get on with one of the grandkids maybe the grandparents should act to protect that grandchild's inheritance. Being an estate planning lawyer means very often having to ask the hard questions - questions about their family that can make people a little uncomfortable. I had to ask one of those the other day.

Adam and Donna came to see me about their estate planning. They particularly emphasised that they wanted their grandchildren to receive a material sum from their estate. After we discussed it for a while it became clear that they wanted that sum protected by the use of a testamentary discretionary trust. During our discussions I asked "How do your children get on with their children? Is there any friction?" Why would I ask that? they said.

The answer is that if we are to set up a trust then we have to decide who will be the trustee. That trustee will have a lot of power and we need to know that they will carry out the deceased's wishes. If there is any friction between, say, the deceased's daughter and one of her children then making the daughter the sole trustee of the testamentary trust might not be a good idea. The daughter might make decisions that don't favour the child she doesn't get on with.

It was clear that this explanation unsettled our clients, but it certainly got them thinking. I was able to tell a war story about a case we handled where the daughter received 90% of her father's estate but sued the estate for the other 10% which had been given to the deceased's grandson i.e. the daughter's son. The daughter and her son were so estranged she wouldn't even let him have 10% of his grandfather's estate. We successfully defended against her claim but the case shows just how extreme some people's behaviour can be when family relationships break down.

In the end, even though Adam and Donna didn't believe that their children would behave like that toward the grandchildren, it was decided to make both children the trustees of the testamentary trusts so that in the event of a problem between one trustee and their child the other trustee would be there to ensure that the estranged grandchild still received their entitlement from the trust.

Estate planning is not just for rich people. It is for everyone who wants to ensure that their families are looked after following their death.

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