

THE SAGE INVESTOR



Fall 2007 Focus On Creating A Legacy

The Family Meeting Process: Pre-Emptive Estate Planning

Ian Hull & Suzana Popovic-Montag

Hull & Hull LLP

There are numerous problems that can arise in the course of estate planning and while an estate is being administered. The reality is that it is simply not possible to “bulletproof” an estate plan, no matter how carefully it has been planned, drafted and administered.

From our experience as estate litigators, however, we know that many foreseeable problems (and even some unforeseen ones) can be avoided, or at least partially resolved, through careful estate planning and innovative pre-emptive preparation.

The choice of executor, for instance, the potential claims by dependants, drafting issues and the possibility of capacity challenges are all examples of problems that can be both foreseen and carefully managed with thorough estate planning.

Traditional estate planning is focused on developing a comprehensive estate plan that includes the writing of a Will, the creation of powers of attorney and

strategies to minimize an estate’s tax liability.

But, developing an estate plan is only one part of protecting an estate from litigation; the other part is consulting with family members about intentions and, to the extent possible, working with them to obtain their agreement.

Enter the modern concept of the Family Meeting Process. “Bottom-up” as opposed to “top-down” estate planning – clearly a shift in how we normally think about estate planning.

At a family conference, the matriarch and patriarch have an opportunity to explain their wishes to family members and set out how they intend to distribute their estate and why.

By providing a forum for discussion (as opposed to planning under a shroud of secrecy), the parties can try to ensure, to the extent possible, that the intended beneficiaries accept (even if they do

not necessarily like) the end result.

We call it the “eyeball effect” – looking into the eyes of the family members, the very persons who might otherwise challenge estate plans at the end of the day, and explaining their intentions while they still can.

No one wants to leave a legacy of ill will and acrimony among their family members. The difficulty, however, is that treating individuals fairly does not necessarily mean treating them equally. When parents die, they can no longer answer the very question that so often lingers when others do not receive what they expect or feel they deserve – the “why?”

The Family Meeting process, premised upon frank and open communication, is an excellent way to minimize the risk of this occurring – and possibly the best alternative available in the circumstances.