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Generational Wealth through Adoption and Dynasty Trusts

Since a dynasty trust is mainly used to create a lasting financial legacy for multiple generations, it is structured to provide for the client's descendants. This is a common strategy to ensure that wealth is preserved and passed down over many lifetimes and stays within the bloodline. However, if a beneficiary does not have any descendants, other family members may likely inherit. If the beneficiary would like someone else to inherit, they may consider adopting that individual so that they will be considered a descendant.

The Rights of Adopted Children According to State Law

Under most state laws, adopted children typically have the same legal rights and privileges as biological children. Once the adoption process is complete, adopted children are treated as the biological offspring of their adoptive parents.

Adult Adoptions According to State Law

Adult adoptions are legally permitted in some jurisdictions, but the laws vary and can be very restrictive. In some places, adult adoptions may be allowed for reasons beyond familial relationships, such as inheritance or emotional bonds.

If the state allows it, your client's beneficiaries could consider adopting adults to ensure that a loved one receives a share of their inheritance.

Legal Considerations

Inconsistencies in trust language can often lead to probate and estate litigation. If a trust does not specifically address the adoption and intent, it can cause problems, as was the case in *Morse v. SunTrust Bank, N.A.*[1]

In 1967, a multi-generational testamentary trust was created to provide separate subtrusts for each of the decedent's 13 grandchildren, including any new grandchildren born before or after the grantor's death. If a grandchild died without any descendants, their subtrust would be divided and added equally to the remaining subtrusts. The decedent did not address whether adult adoptees would be treated as descendants.

One of the decedent's grandchildren, Molly, never had any children. In 2018, she adopted two adults, ages 34 and 36, admitting that the adoptions were for the purpose of receiving distributions from her subtrust on her death.

Other subtrust beneficiaries objected to Molly's adopted adult beneficiaries, accusing her of fraud. A trial judge agreed, preventing Molly's adopted adults from inheriting as descendants.

An appeals court reversed the trial judge, noting that the testamentary trust had failed to place any limits on an adult adoption. Also, Georgia's adult adoption statute did not include any language that would prevent Molly's adopted adults from becoming beneficiaries of her subtrust.

Adoptions and Trusts

It is important for your client to address the potential for adoptions as part of their estate plan. They need to know how adopted individuals (adults or children) will be treated as beneficiaries according to your state law and ensure that their trust clearly expresses their wishes. A trust can contain a definition of a descendant and address the possibility that an adopted individual will become a beneficiary of the trust. Alternatively, provisions in the trust can exclude adopted individuals.

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[1] 873 S.E.2d 238 (Ga. Ct. App. 2022)

Advising Your Clients

Adoptions are not necessary to transfer your client's own money and property to those they choose. But trust beneficiaries without children may be able to use adoption to steer trust funds to the person of their choice rather than having the money redistributed to other relatives. However, adoption can backfire if a relationship ends, leaving an outsider with a share of the family fortune or alienating family members.

It is crucial to consult with other professionals if adoption and estate planning fall out of your scope of expertise. They help ensure that any adoption-related strategies align with state laws and regulations, which define rules for succession for adopted individuals, whether minors or adults. Trust documents should be carefully drafted to account for various scenarios and to provide clarity on how adoptions would affect the distribution of money and property within the trust.

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I WORK COLLABORATIVELY WITH A CLIENT'S PLANNING TEAM OF FINANCIAL ADVISORS, INSURANCE PROFESSIONALS AND ACCOUNTANTS TO ADVISE CLIENTS ON THE BEST WAY TO ACHIEVE THEIR GOALS

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