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Estate Planning as a Family Conversation

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FOR many people, estate planning is both a private matter and a morbid topic — not something that parents and their adult children want to discuss. While having these conversations takes a lot of courage, they can help avoid surprises, lead to better financial planning and promote family harmony.

Julie Busch, a vocational consultant in Seattle, asked her father, Russell, about his estate plan last summer after learning he had brain cancer. She was surprised to find that Mr. Busch, a lawyer specializing in American Indian rights, did not even have a will.

Without one, state law in Washington dictates that everything he left behind would go to his wife, from whom he has been separated for 30 years. Mr. Busch, 66, decided he would rather have his assets divided between their two children, and last month, father and daughter met with a lawyer to discuss the necessary documents.

Families that speak freely about estate planning can sometimes address awkward situations that might arise, like the choice of the executor — who is in charge of distributing assets after someone dies — or succession plans for a family business or the leaving of assets in trust.

While parents have no obligation to change an estate plan after hearing a child's preferences, being upfront about what they plan can help refine their approach, said John L. Berger, a lawyer with Lowenstein Sandler in Roseland, N.J.

Mr. Berger recalled a client who had planned to leave one son a larger inheritance than the others because he had more children. When the mother shared these details with the son, he said he would rather receive less money than face the wrath of his siblings. As a result, the mother changed her plan so that all her children would receive equal shares.

Charles W. Collier, author of "Wealth in Families" (Harvard University, 2001), encourages

parents “to tell their children the principles that have guided their decision” — something his own father didn’t do. Although all of his father’s other assets were split equally, the family’s New Hampshire vacation home went solely to Mr. Collier, a development that left one of his three sisters resentful.

The father wanted the house to go to his son, who used it most, Mr. Collier said. So far, he has not been able to appease his sister, and he said he thought she would have accepted this reasoning if it had come directly from their father.

Of course, parents who share their thinking risk hostility from adult children who do not like what they hear. Phyllis Rappaport, a founder of the Cure Alzheimer’s Fund, said she and her husband held several family meetings at which they described their philanthropic plans to their 10 adult children. While the reactions were largely positive, one child continues to feel that too much will be left to charity, she said.

How families handle delicate issues depends both on the particular circumstances and the personalities involved. Sometimes it is best to have a series of talks, rather than covering everything all at once, Mr. Collier said. Or parents may talk to each child separately, rather than addressing them as a group. Afterward, he says, parents should ask, “What do you think?” Adult children “may have great ideas and opinions,” he said.

Richard Hayman, an entrepreneur in Rockville, Md., figures he saved his family hundreds of thousands of dollars in taxes by suggesting that his father, Stanley, set up a family limited partnership — an estate planning tool that can serve a variety of functions.

The elder Mr. Hayman, who had built a successful cash register business, hated spending money on lawyers and accountants, and did not mind the idea that his assets might go to the government as taxes. His attitude was that if his children wanted different arrangements, they should pay for the legal work. So Richard Hayman hired a lawyer and paid tens of thousands of dollars for tax-saving services.

A trickier situation involves adult children who notice signs of a parent’s mental decline. Once parents become incompetent, they lack the legal capacity to make binding commitments, so it is important to sign estate planning documents before that happens. But broaching the matter may threaten a parent’s independence and desire for control.

One possibility is for the child to say: “I just did my own estate plan. Don’t you think you should update yours?” said Bernard A. Krooks, a specialist in elder law at Littman Krooks in New York. Another is to convey a story about a friend’s parent who did not take the necessary measures and how much hardship was caused for those children.

Sometimes there is a fine line "between being well meaning and protecting your own inheritance," said Wendy S. Goffe, a lawyer with Graham & Dunn in Seattle. For that reason, lawyers typically insist that they have an opportunity to meet with the parent separately, even if a child provides transportation to the office.

Their goal is to guard against the two most common grounds for contesting a will or trust. One is undue influence, which refers to efforts to coerce someone to sign estate planning documents that favor one heir over others. Another is the argument that the client lacked capacity when signing the document.

Sure, it is easy to get frustrated with parents who do not put their affairs in order. But keep in mind that having the conversation requires them to confront their mortality. For both parents and children, that can be a gigantic step.