

WHAT THE HECK IS HOTCHPOT??

Equalizing Uneven Advances to Kids in Your Will

“Her piece of cake is bigger than mine! **It’s not fair!!**” As a mother of 2 young children, this is something I hear on a regular basis. It drives me a bit crazy, but as parents, when it comes to our kids, we all know how important the concept of “fairness” can be.

Many parents fret over how they will equalize their wills where they have made unequal gifts, advances or loans to their kids over the years. Parents with the financial means sometimes advance money to a “financially dependent” child to help with living expenses or help them buy a car or house, to the exclusion of their other children who are “financially independent”. These parents often expect that when they pass away, the money they have advanced to their financially dependent child or children while they were alive will be considered advanced on account of the children’s inheritances, NOT separate gifts over and above their inheritances.

Have no fear, the “Hotchpot Clause” is here. The legal and accounting concept known as a hotchpot clause is available to deal with the equalization of the shares of the beneficiaries of a person’s estate where one or more of the beneficiaries has already received money from a parent during the parent’s lifetime. It prevents a beneficiary (usually a person’s child) from double dipping where a parent intended that any money they’d given to that child during their lifetime to be a pre-payment of an inheritance, instead of an advance above and beyond the intended inheritance.

The hotchpot concept is best illustrated by an example:

John and Martha Moneybags have 3 children, David, Suzie, and Barbie. John and Martha have an estate of \$900,000.00. David, their eldest, suffers from an entitlement curse, and has never held a long term job or finished university. However, he can do no wrong in his dad’s eyes and over the past few years, John has advanced David \$100,000 to fund his backpacking and skiing lifestyle. Suzie’s marriage recently broke up and her husband left her with 3 young children. John and Martha recently advanced



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\$200,000 to Suzie to help her purchase a house. Barbie has a successful toy store business, and while not wealthy, she makes a good living.

John and Martha intend to have their \$900,000 estate split equally when they die, but they want the money previously advanced to David and Suzie to be accounted for, such that Barbie gets 1/3

of their estate, including amounts previously advanced to David and Suzie. If John and Martha were to die in a plane crash today, their current wills state that their estate is to be divided equally among their 3 children, so each child would get \$300,000 (1/3) each, which is not their intention.

Had John and Martha met with their lawyer before the plane crash, their lawyer could have updated their wills with a hotchpot clause, such that their estate would be considered to have been \$1,200,000 (\$900,000 + \$100,000 advanced to David + \$200,000 advanced to Suzie). Thus, when the estate was settled, Barbie would receive \$400,000 ($\$1,200,000/3$), David would receive \$300,000 ($\$400,000 - \$100,000$) and Suzie would receive \$200,000 ($\$400,000 - \$200,000$).

A hotchpot clause requires evidence of provable amounts advanced to beneficiaries, so it is very important for parents to keep **good records** of money provided to their children. Bad, or no book-keeping may render a hotchpot clause ineffective.

Where parents intend to split their estate equally amongst their children/beneficiaries, but have made loans, advanced funds for house purchases, or just given money to their children in unequal amounts while alive, their estate planning should include consideration of those gifts and loans, with proper evidence, and their lawyer should draft a hotchpot clause in their wills.

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