

Dividing the Money (And the Memories)

By Fred Brock
The New York Times

Les Kotzer, an estate lawyer in Toronto, says people should worry more about saving their families than saving taxes.

"Family estate fights are not just over money," he said. "They're also over memories. These memories can create such bitter warfare that family members will sometimes spend more money on legal fees than the assets in question are worth."

He recalls two clients - brothers - who fought in his office over a Howdy Doody lunch box in their father's estate. "One brother said, 'That lunch box has the smell of my childhood on it, and I'm not giving it to my brother,' " Mr. Kotzer said. The other brother finally relented, but the two parted on unfriendly terms.

In another case, two brothers got into a fight in Mr. Kotzer's office over a sports trophy that belonged to their father. One brother threw a heavy law book at the other, barely missing his head. Mr. Kotzer sent them to another lawyer.

Cases like these prompted Mr. Kotzer and his law partner, Barry Fish, to write a book, "The Family Fight: Planning to Avoid It" (Continental Atlantic Publications, 2002). It offers common-sense, plainly written advice that is applicable in both the United States and Canada, where the authors practice. The book is sometimes hard to find in bookstores, but it can be ordered from Internet booksellers like Amazon.com and barnesandnoble.com or from Mr. Kotzer's Web site, (www.familyfight.com). The book can also be ordered toll-free at (877) 439-3999. The price is \$14.95, plus shipping.

For Mr. Kotzer, planning is vital to help families sidestep acrimony. "Death is not the only issue that can lead to family fights," he said. "Someone's incapacity can also start a family war. People need to plan for both with a will and a durable power of attorney."

He also advises parents to meet with their children to work out solutions in advance. "I've never had a parent come to me and say, 'I want my kids to fight.' Yet the children end up fighting because the parents have done no planning or have planned poorly. They've had no discussions with their children and have made some very bad assumptions."

ONE of those assumptions, he said, is that children will exercise good will and settle things amicably. Another is that everything will be fine if each child receives an equal share in an estate.

"Parents should never assume good will among their children if there have been no prior agreements or discussions," he said. "They should never make one sibling dependent on the good will of another sibling. Then it's often the lawyers who have to work it out. And once you get lawyers involved, the relationship between siblings is never the same."

The idea that equal shares are fair may not be fair at all, he said. "If one child has been a caregiver for years, would he or she be satisfied with an equal share?" he asked. "Or what about if parents have given a lot more money along the way to one child than another? Are equal shares fair then?"

Mr. Kotzer cited the case of a woman who had taken care of her mother for years and had planned to live in the mother's house after her death. But the mother left the house equally to the woman and her brother. The brother wanted the money, so he went to court and forced a sale. In the end, his sister was forced out of a house that her mother had told her would always be hers.

When wishes aren't spelled out, problems can arise from second marriages, too. "There can be two sets of heirs with nothing in common," he said. "They may actually hate each other."

One of his clients, whose father had remarried, was from a wealthy family, Mr. Kotzer recalled. "When the father died, he left everything to his second wife with the understanding that she would leave everything to his son when she died," Mr. Kotzer said. "But instead she left everything to her two children, and my client got nothing. His stepsiblings won't even let him see his family pictures, which are now theirs."

Mr. Kotzer urges parents to have their financial records organized to avoid surprises and family fights. "You can leave a good will, but still leave a mess if things are disorganized," he said. "Keep good records so that your children aren't so vulnerable to fighting at a difficult time."

He also warns against do-it-yourself will kits, citing the case of a woman who prepared her own will, leaving her "personal moneys" to her two sisters and everything else to her husband. It turned out that she had some money in checking and savings accounts, plus hundreds of thousands of dollars in certificates of deposit. The husband and the woman's sisters fought over what "personal moneys" meant: The sisters asserted that they included the C.D.'s, while the husband said they were only the small accounts. A judge ruled in favor of the husband, but only after hard feelings had developed and a lot of money had been spent on lawyers.

"I tell people that the most important assets they have are not in their banks or safety deposit boxes but in the family photo album - in the faces of their children and other loved ones in that album," Mr. Kotzer said.