

# With Professional Estate Planning, There's Less Chance of Splitting Heirs

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Estate taxes are becoming less of a threat to the average American family, but that doesn't eliminate the need for estate planning, experts say.

To drive home the point, financial planners cite horror stories, such as this one about a Beverly Hills woman who died without a will. Under California law, her three daughters were entitled to share her estate equally.

A probate judge put them equally in charge of making decisions. Had they agreed about the disposition of some real estate and personal assets, they would have walked away as millionaires within months. Instead, they bickered for 13 years while their mother's assets--small business interests and real estate--languished and their value declined. Millions were spent on legal fees. The family home burned to rubble.

Federal tax laws were changed last year to gradually raise the estate tax exclusion until estate taxes are eliminated. In 2002, Americans can leave as much as \$1 million to their heirs tax-free.

But even if tax avoidance no longer is an issue, a good estate plan is worth doing to save heirs the agony and litigation expense of battling over an inheritance, experts say.

"The fact that tax issues are becoming less important puts more of a magnifying glass on the other side of estate planning, which is keeping families out of the courtroom when they get their inheritance," said Jeffrey L. Condon, a Santa Monica attorney and author of an estate planning book, "Beyond the Grave."

Estate planning is not cheap. Even a relatively simple will could cost \$500 or more. But depending on the circumstances, it may be worth the cost.

In traditional family situations in which everything is left to the children and grandchildren, legal contests are rare, said Avram Salkin, an estate planning attorney with Hochman, Salkin, Rettig, Toscher & Perez in Beverly Hills. But throw in a second marriage, unequal bequests to children or long-standing rivalries between siblings, and battles become common and costly.

"Any of these cases where there is a dispute and witnesses called, it costs easily \$50,000 per party," said Myer J. Sankary, a Sherman Oaks attorney who mediates probate disputes.

"I try to explain [to heirs] that they're dividing up a pie, but it's an ice cream pie. The more they fight, the more time it takes, the more the estate melts away."

How can you ensure your estate plan addresses your wishes and doesn't cause fights among heirs?

## **Communicate**

Condon encourages parents to have a meeting with their heirs and their estate attorneys before, or immediately after, the estate plan is drafted. That gives them the opportunity to explain their intentions, including who will get what and who will be named executor.

This serves two important purposes. It gives parents the ability to explain apparent inequalities, and

gives family members a chance to discuss the plan and possibly sway some of the decisions.

At the same time, these meetings establish the competence of the individuals making the bequests, which makes it much more difficult for disgruntled heirs to dispute the will later.

### **Heirs May Not Share**

Often, a family member has a problem that makes parents reluctant to leave that person a lot of cash. Perhaps there's a greedy spouse, or drug, alcohol or debt problems that make such bequests unwise.

Some parents try to address this by leaving all their assets to another sibling with the expectation that the siblings will share, said Les Kotzer, an estate planning attorney who was co-author of "The Family Fight: Planning to Avoid It."

But the sibling who gets the cash probably will feel entitled to it and may not be inclined to share.

Kotzer said parents should use trusts, not siblings, to preserve an inheritance for those who can't safeguard assets themselves.

### **Inadvertent Inequalities**

There are two ways inadvertent inequalities arise: One is when a parent wants to leave valuable possessions to one child and leave an equalizing payment to another. Too often, the value of the possession--a baseball card collection, for example--rises or falls over the years, while the equalizing payment is set in stone, Kotzer said.

Those leaving equalizing gifts should update estate documents every few years or consider stipulating that the personal asset be appraised at the time of death and that the equalizing payment be made to match.

The other way inadvertent inequalities arise is when parents bequeath everything equally but fail to recognize that one child may have gotten more from the parents than the others over the years. In those cases, Condon suggests unequal bequests be considered and explained as a way to equalize what happened while the parents were alive. Conversely, a child who gave up a career to care for ailing parents may deserve more than siblings who didn't.

### **Don't Disinherit**

Even when a child is a miserable, rotten ingrate, it may not make sense to cut him or her completely out of the will, Condon said. It's wiser to leave that child a token amount and place a no-contest clause in the will. The no-contest clause says that anyone who disputes the will gets cut out of it.

### **Consider Tie-Breakers**

Parents who want to leave their children equally in charge of the inheritance and bequest everything equally among them may need to consider what happens if the kids disagree.

If both daughters want mom's pearls, for example, how should the dispute be decided? Leah Bishop, attorney with O'Melveny & Myers in Los Angeles, suggests that parents include a formula for breaking ties, whether it's allowing the children to bid on disputed items and pay the value to the estate so no one walks away with a bigger share, or appointing a third party to review disputes and cast the tie-breaking vote.