

Estate planning prevents family feuds?

McClatchy Newspapers

Published Monday, Apr. 19, 2010

The irate sister who smashed a crystal vase in her attorney's parking lot, rather than hand it over to her sister after mom died. The squabbling siblings who spent three years and \$15,000 battling over a few hundred dollars worth of JC Penney and Kmart knickknacks. The brother who shot his deceased sister's beloved dog in order to collect his inheritance.

Talk with enough estate planning attorneys and you hear the distressing, sorry sagas resulting from no - or poor - estate planning.

"Family, money and death are a combustible combination," said Toronto-based attorney Les Kotzer, who co-authored a new book - "Where There's an Inheritance ..." - a compilation of 80 real-life vignettes taken from his law practice and radio show callers.

Some of the tales are horrifying. Many are heartbreaking.

"A lot of time they will spend more on lawyers than the value of items they're fighting over," said Kotzer, who said he wrote the book to warn families about the perils of family feuds. "Once you send a lawyer's letter to your brother, the relationship will never be the same."

Those who witness the ugly aftermath say many of the situations could have been avoided with a properly executed will or trust.

"Generally parents are the glue that holds a family together and by the time estate planning blunders become apparent, the glue is gone and the family can fall apart," said Trudy Nearn, a longtime Sacramento estate planning attorney.

The recession has apparently kept even more Americans from completing any basic estate planning documents - a will, trust or financial/medical powers of attorney, according to a December survey by Lawyers.com. Only 51 percent of adults reported they had such estate planning documents, compared with 64 percent in 2007. Most cited their need to focus on paying bills and other "essential" money priorities, the survey said.

Amid all the distressing estate planning tales, there are some lessons to be learned:

EARMARK THE STUFF

Too many families get torn apart by who-gets-what disputes: who gets mom's china, who keeps dad's signed Joe Montana football, who gets the lawn furniture.

It's often stuff that's not even particularly valuable, says Sacramento estate planning attorney Michelle Goff. She had clients who argued for years over their mother's personal effects. It finally got resolved around a lawyer's conference table where the disputed items, many with their JC Penney's and Kmart price tags still attached, were spread out. Taking turns, each sibling got two minutes to pick two items, until the table was emptied. But that was only after three years and \$15,000 in legal fees.

Kotzer recalls a sister who was incensed that a crystal vase she'd given her mother was to be divvied up in the estate, rather than handed to her outright. Her angry solution: smash it to smithereens in the parking lot "so nobody will get it."

A better solution: Ask your kids if there are things they'd like after you're gone. Type up a list designating who gets important items, like wedding rings, silver, family mementoes.

"If parents make the list, the trustee is obligated to follow (it). It removes the emotional battle," Goff said.

Sacramento estate planning attorney Mark S. Drobny said he's had families whose list has only three items on it; others run 30 pages long, "down to the socks in the drawer."

NAMING THE EXECUTOR

Deciding who will handle your affairs after you're gone can be tricky. Lawyers say parents often select their oldest adult child, but that's not always the person best equipped emotionally or organizationally to handle the task. And it can create resentment among other siblings. Similarly, naming all your children as co-executors can result in deadlocks.

Every family is unique and parents should consider their choice thoughtfully. Sometimes an outsider - a trusted family friend or a private fiduciary (an individual licensed in a county to act as an executor or estate trustee) - is preferable.

"It takes the emotion out and gets the house listed, the items distributed and lets family members go through the grieving process," said Goff.

WATCH THE MONEY

Beware of unintended consequences. Drobny had a client who set aside \$75,000 in her will for friends, family and charities, with the remainder going to her only child. But when she died, the value of her assets had plummeted so significantly that once the \$75,000 was disbursed her daughter received almost nothing.

In another case, Kotzer recalls a client who had dutifully taken care of her mother for years, while her sibling was largely absent. The mother wanted to leave nothing to the absentee daughter, but was persuaded to give a token 5 percent. The arrangement backfired. The devoted daughter, who was executor of her mother's estate, became shackled financially for years to her resentful sister, who disputed every financial decision. In that case, Kotzer said, the mother's wishes would have been better served by specifying a small, set amount for the distant daughter.

To ensure there's something left for everyone you care about, be specific about your bequest; i.e. the charity will receive "the lesser of \$75,000 or 20 percent of the estate."

THINK IT THROUGH

Many parents build incentives into their trusts for their children's inheritance: reaching a certain age in adulthood, completing college, mandatory drug/alcohol testing in cases of substance abuse. Those can be worthwhile goals that keep young - or even adult - children from squandering their parents' bequest.

But some take it too far, says Drobny. He had local clients whose will stipulated that the first son to provide them a grandchild would get \$1 million. The sons, both in their 50s, soon sired children. "Neither son had any business becoming a parent at such a late age, let alone ever," noted the attorney, who said he tried talking the parents out of it, but they were adamant. The sons subsequently left the mothers of their offspring.

In another case, a local elderly woman had set aside part of her estate to care for her beloved pet dog until its death, when the remainder would go to her brother, a retired policeman in Ohio. The brother subsequently contacted Drobny's office to discuss his sister's money and property.

When the attorney explained that there was no estate to settle while the dog was alive, the brother declared the unthinkable: "He said he'd taken the dog out in the country and shot it."

Obviously, Drobny noted, the sister wouldn't have wanted her brother "to inherit a dime" under the circumstances, but there were no provisions for the dog's unnatural death.

In their book "Trial & Heirs," Danielle and Andrew Mayoras, Michigan-based husband-and-wife estate attorneys, chronicle the lessons learned from notorious estate battles of Hollywood celebrities, rock stars, athletes and political figures. Like the years of costly lawsuits stemming from rock guitarist Jimi Hendrix's death in 1970 at 26, without a will. With his father and half-siblings locked in disputes over his multimillion-dollar legacy, it took 34 years, many court proceedings and several million in legal fees to sort it out.

All of it could have been avoided, say the authors, if Hendrix had left a simple will.

Poor estate planning can drain families emotionally and financially. A little prevention good planning, thoughtful choices and a clear discussion among family members can sidestep an ugly aftermath.

As the Mayorases put it in their book: "The only good legal battle is the one that never happens."