

Love and Dying — Klancke & Cook

Posted on January 17, 2013 by LIVING WELL Magazine in Articles, Finance & Planning, Legal, Local Editions

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You might be surprised how many people have prepared their estate documents and then believe everything is in order when that is simply the farthest thing from the truth. The truth is that if you haven't prepared a relationship-centered estate plan, a written legal plan only accomplishes a small portion of creating stability from generation to generation. Worse, a written estate plan that does not shore up the potential emotional pitfalls that may surface after your death could be worse than no estate plan at all.

Day after day, we talk with families in conflict caused by the death of a parent. Rarely is it directly about money. Often it's about family possessions and division of monetary gifts that make a child—a 30-, 40-, 50- or even 60-year-old child—feel slighted, justified in his or her grudge or otherwise put out. You see, we are all walking around in adult bodies, while still embedded in our brains are the memories of perceived wrongs we were subjected to as children—an older sibling locking us in the closet or embarrassing us in front of someone important or what about that parent who failed to attend some event that was very special to us? Who knows what it is. All we can tell you is that in over 35 years of practice, we know it's true. Most adults revert to the age of 13 when dealing with their siblings after a parent's death.

Every day we see reasonable, kind, thoughtful parents inadvertently attempt to set up conflict for their "children" by doing what they think is best in providing for them. Take this true example:

"My daughter, Catherine, is 38 years old, unmarried, no children and is a cardiologist. She has more money than she knows what to do with. My son, Bryan, is 32 years old, married with three children. He and his wife work hard, but sometimes struggle to make ends meet. I want to write my will to leave the bulk of my estate to my son who would make good use of it, rather than to my daughter for whom it will do little more than simply add to her portfolio. My two children have always gotten along very well, so I asked Catherine what she thought about my idea. She said that it is a fine idea; she does not need the money so go ahead and give most of it to Bryan. She said she mainly would just want some personal items. I know Catherine well and I believe that she is being sincere in her comments. What do you think?"

Believe it or not, this is a very easy question. The Answer: Divide your estate 50/50 between your two children and then forget about it. Ignore your daughter's comments completely. Remember what we said above? When you speak to your daughter, you think you are talking to an intelligent, highly educated, mature person. The 13-year-old Catherine has always had the hidden belief that you preferred the baby of the family, Bryan, over her. Perhaps she got straight As and went to medical school to win your approval. If you leave her a lesser share, you will confirm that belief forever. There is a part of her that will always think that if you really loved her equally, you would signify that love within your final written document on this earth by giving as much to her as you give to her brother. Do not alter that plan. There is nothing stopping her from helping her brother. Just let it be her decision, not yours.

As an opposite example, what if Bryan is an alcoholic? Do you leave everything to Catherine and nothing to him because he's "just going to drink it away anyway"? No. You leave Bryan half or you have created the potential for a contentious relationship between Catherine and her brother. He will feel unloved by his parents and resentful of his sister. Set up a trust—if necessary—to hold and manage his 50%. Or, if you still want to leave Bryan little or nothing, be blunt and tell him, while you're still alive and well, what your intentions are and to not blame his sister for this decision. Left skewed and unspoken, this situation will likely guarantee a lifelong rift between Bryan and Catherine and has little chance of providing your children a smooth inheritance relationship.

The other area where extreme conflict and complete broken relationships arise is from the distribution of personal possessions. We cannot tell you the number of people who have stories of family members not speaking to each other ever again, because of perceived wrongs in who got what of mom's (or dad's) special personal items. You have one engagement ring and three daughters (or daughters in law). Who gets it? What about grandma's sterling silver that was passed down to you or dad's sporting gun collection? This is where you, as the parent, need to take the hit and list out who gets what. Don't leave it up to your children to decide. Hurt feelings are guaranteed. A lottery system is a good second back up but if you really want to ensure your children the chance of maintaining a relationship after your death, you be the decider and you tell them, while still alive and well, that you made the distribution decisions and to blame you if they don't like the distribution. It can be really hard as parents to make those decisions, but understand it is worse to not make them. Be brave.

One final thing, feel free to ask if there is anything of yours that is very special to them; input is great! Just make sure the final decision is yours and you've conveyed to them that you made the final decision, without influence. Most wills have a "Personal Property Memorandum". It is designed to distribute your personal belongings to named individuals. Take the time to fill it out. Once you have made the hard decisions of who gets what, write it down in the memorandum and store it with your will. Deal done.

David Cook and Jill Klancke have been practicing law in the Denver area for over 25 years and can be reached at 303-584-0500. David presents "Mom Always Loved You Best", an exploration of families in difficult times, throughout the state of Colorado. Visit their web site at klanckecook.com.