

Prevent Family Drama, Plan for the Inevitable

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Time and time again when a family member dies (usually the matriarch or patriarch of the family), drama among family members erupts over the assets left behind. Often the matter ends up in court with family members pitted against each other, each side hiring a team of lawyers.

Sometimes there is a will or no will, which in either case guarantees that there will be probate². Sometimes there is a trust which should avoid probate, but if poorly drafted, the parties still end up in court. The aim of this article is to provide information that will propel you to act and prevent family drama that can erupt when dividing a loved one's assets.

1. Encourage Your Matriarch or Patriarch to Plan for the Inevitable:

While it may look suspicious to others when a family member (son or daughter), encourages their mother or father to execute a will or trust, it is better to do so than not. Even though parents often don't want to broach the topic of planning for what happens at their deaths, it is more prudent for a child or children to encourage the parents to do so while not becoming directly involved in the process. Planning prevents speculation at death regarding the intent of the deceased about their assets. Here are some dos and don'ts for children:

- a. Do: research and help find an Estate Planning Attorney³;
- b. Do: schedule the meeting if your parents authorize you to do so;
- c. Do not: attend the meeting, or if you escort your parent/s, do not sit in the meeting with your parents/ and the attorney;
- d. Do not: pay the attorney's fees for creating your parent/s estate plan from your funds;
- e. Do not: get involved in deciding who receives assets in your parent/s' estate plan. It is their plan, not yours. By involving yourself too much, you run the risk of allegations of undue influence.

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² Probate is the **court supervised** process of following a deceased person's wishes in determining who inherits their assets. In California a deceased person's assets must pass through probate whether they had a will or not, if the value of those assets is \$150,000 or more.

³ Find an attorney whose primary practice area is Estate Planning, not just those who advertise: We do "Wills and Trusts", or "Document Preparers."

Attending a meeting, financing an estate plan, or helping divide assets may result in a challenge or contest when your parent passes away.

2. Put a plan in place while you are able:

Do not wait until you or your loved one has suffered or is suffering from a fatal illness and have been admitted to the hospital before putting a plan in place. The will or trust often ends up being challenged or contested. Instead plan while you are still healthy and in control. While healthy, you are able to think clearly and deeply about who you will appoint to take control of your assets, and how your loved ones will receive those assets. These are not decisions you can make easily while under the pressure of serious illness. A plan written at the hospital may still be valid, but it is more likely to be contested than one that is written with careful and deliberate consideration.

3. After making the plan, record it:

Over the last few years in my practice, I have encouraged my clients to record their testamentary wishes, especially with the prevalence of new technology and small recording devices such as smart phones, video and voice recorders. Even if contested, it is more difficult for a court to ignore a visual/audio recording of a healthy person clearly reciting his/her wishes at death, than to accept the clever arguments of a lawyer who is trying to overturn those wishes as untrue. It helps avoid allegations of duress or undue influence.

Conclusion:

Remember the old adage, those who fail to plan, plan to fail. Don't let your failure to plan for the enjoyment of a tax free inheritance by your loved ones lead to protracted, costly and unnecessary litigation that may ultimately tear up the family. Be proactive!!