

# Fights Over Estates Can Tear Families Apart

My personal story and guidelines for keeping the peace

By Hyman Darling

## Key Takeaways

- As more and more boomers reach retirement age, trillions of dollars in family wealth are going to be transferred from older to younger generations. But many heirs (and their advisors) are not prepared.
- As I've learned the hard way, a significant number of families lose a chunk of their inherited wealth due to estate battles and misunderstandings.
- Advise your clients to think at least as much about the nonfinancial aspects of dividing their property among children and other heirs as they do about minimizing taxes.

According to global consulting firm Accenture, an estimated \$30 trillion of wealth is going to be passed from older generations to younger generations over the next three to four decades. That has a profound impact not only on wealth managers, estate planners and other financial advisors but on the families involved as well. Differing values about investing, saving and preserving wealth are bound to surface, not to mention differing views on which philanthropic causes should be supported.

Roughly 70 percent of families lose a chunk of their inherited wealth, mostly due to estate battles, according to research conducted over two decades by the Williams Group, a San Clemente, California, firm that periodically contributes to *Elite Advisor Report*.

The fights aren't always about the money, either. You can have a multimillion-dollar estate and the children can be arguing over watches, golf clubs and inexpensive jewelry that have more sentimental value than appraised value.

Sadly, you'll see heirs spending more money than they stand to inherit on legal fees to battle siblings or other family members. I should know. I spent a good share of my own money on hiring an outside lawyer and deposing family members whom I suspected of unduly influencing my grandmother. It really wasn't about what I was going to get. I was looking for the truth, which I eventually received—at a cost.

That seismic shift in assets will create ample opportunity for estate fights among the wealthy as well as among the merely affluent. As an estate planning attorney, I see this play out every day in my office. I have also lived it firsthand.

I no longer speak to some members of what was once my tight-knit New England family after a fight following the death of my grandmother back in 1993.

**Steps you can take to preempt family estate feuds**

As I've learned the hard way, battles over estates can inflame family relationships, but there are ways to lessen the chances that your heirs will turn against each other. That includes consulting with your heirs or getting your property appraised and specifically designating beneficiaries for those items. Also, make sure you choose your executor wisely.

I recently had a successful resolution while dealing with a family whose adult kids were not talking to each other. I told them I needed them all to come to my office to discuss an important matter. And they did. Maybe it was the law firm stationery (chuckle). Turns out the long-standing feud was over a simple misunderstanding. And now they're back on track and spending the holidays together.

Here are some other pointers for families to consider when putting together an estate plan.

- Estate planners and other experts advise clients to think at least as much about the nonfinancial aspects of dividing their property among children and other heirs as they do about minimizing taxes. As the old saying goes, fair doesn't always mean equal, and it's almost impossible to divide things such as property and possessions equally.
- Decide early on what "fair" means within the context of your family. A parent might decide to leave a larger inheritance to an adult child who struggles financially and less money to a child who has struck it rich on his or her own. A sick or disabled child might need to inherit cash for long-term care but wouldn't get much use out of a family vacation home.
- Conversely, parents might be reluctant to leave money outright to a troubled or estranged child or believe that while alive they had given a child enough money to justify leaving nothing else to him or her in a will.

Regarding the third point above, in my case, my grandmother, who owned two stores and real estate in New Hampshire at the time of her death, had four living children and several grandchildren. My own mother, who was one of Grandmother's five children, died when I was 19.

When I was 43, I expected to get my mother's share of my grandmother's estate—or at least a lakefront property that had been promised to me. I was pretty surprised to inherit only a few thousand dollars. Some of my grandmother's million-dollar-plus estate had been given away during her lifetime as gifts to her four living children and to a couple of other grandchildren.

I eventually gave up without getting more of the estate. It wasn't about the money, but I did get the truth.

Now, in my own practice, I try to make sure that what clients say is what they really want. That's why I don't invite adult children and their spouses to the meetings. I have to be able to defend those decisions to family members once the clients die or become incapacitated.

### **Preventing fights**

Communicating your wishes about who gets your personal property and assets after you die and making them explicit in your will are usually the best ways to prevent a family feud.

Make a list of your assets, including bank and brokerage accounts, retirement savings, and life insurance—and note whom you have named as the beneficiaries of those assets. Then add homes and big-ticket property such as artwork, furniture, jewelry or expensive clothing and family heirlooms, and consider whom you want to inherit those items.

For instance, if a daughter is the beneficiary of a brokerage or retirement account, giving a home or artwork of similar dollar value to a son can help balance things out between them.

It's worth it to ask family members for their input. Be careful what you ask, as you might be opening a Pandora's box. For example, you might have assumed your daughter wants the Steinway baby grand piano when she doesn't, or you might have thought nothing about a worthless box of old holiday decorations, while all three of your children are jockeying to claim it for themselves.

Getting family input also gives you the chance to explain your reasons for arranging lopsided inheritances while you are still alive and can benefit from whatever parental authority you still have. As another example, you may have helped one son but not the other with the down payment on a house, and that's how you explain to the first son why his inheritance will be smaller. Or your nephew might have been your primary caretaker for the last year of your life, quitting his job to look after you full time, which helps you explain to your other heirs why he is getting proportionately more than they are.

Also be consistent. If one in-law is allowed into the decision-making circle, all of them should be; otherwise resentment between siblings can brew. Listening to only the most vocal child and ignoring the rest or being unclear about how and why a certain decision was made regarding money or property also can breed mistrust. I normally treat in-laws as outlaws, and I don't include them. They just see things differently.

### **Alternative approaches**

Rather than itemizing who gets what in your will, a simple way of dividing things up equally is to get your property and possessions appraised and then have the children or grandchildren take turns choosing what they want while you are still alive. You can also set things up to allow family members to bid on a coveted property after your death.

Life insurance proceeds can be used to compensate one heir for getting less property than another. For instance, if there's a closely held business, one child in the business can receive stock in the business and the other children can receive insurance proceeds that equal the one child's stock.

### **Choosing a family referee**

Often the oldest child gets named executor by default, or two adult children get named co-executors. Both situations can be a mistake if there are still sibling rivalries or resentments. It's best to appoint a

family member or trusted outsider who isn't a beneficiary of the estate. That person can get paid by the estate for his or her time in organizing papers and distributing the assets and can be a coolheaded referee for any inheritance disputes. Otherwise, if you give executors discretion, you run the risk that your wishes won't be honored. If, however, you have only one or two children and they agree it won't be a problem, then you can take a chance. You're not going to be there when they're dealing with your wishes.

Making your intentions known directly to your would-be heirs can also clear the air ahead of time so they won't erupt into conflict after you're gone—particularly in the tricky situation where one child isn't going to get much, if any, money.

Some clients put a clause in their will that says an heir who tries to contest it will get nothing. So-called no-contest phrases work well, however, only when the heir in question has enough reasons not to fight it. Here in Massachusetts, we've found no-contest clauses to be effective, but in some states they're not enforceable.

You should also detail in the will why someone is getting substantially less than the others—or nothing at all—with a phrase such as “I realize I didn't leave [name of child] anything, and that's because of XYZ.” A child can be left out of a will as long as the decision is intentional and made by someone of sound mind without being influenced by someone else.

## **Conclusion**

From my experience I've learned that there's no such thing as a “perfect” estate plan, but by taking detailed notes about your clients' wishes and really getting to understand their values and motivations, we can take the proper steps to ensure that those wishes will be carried out with minimal family strife.

## **About the Author**

*Attorney Hyman G. Darling is chairman of Bacon Wilson P.C.'s Estate Planning and Elder Law departments. His areas of expertise include all aspects of estate planning, probate and elder law. He is a frequent lecturer on various estate planning and elder law topics at local and national levels, and he hosts a popular estate planning blog at [bwlaw.blogs.com/estate\\_planning\\_bits](http://bwlaw.blogs.com/estate_planning_bits). He may be reached at 413-781-0560 or [HDarling@BaconWilson.com](mailto:HDarling@BaconWilson.com).*

***This paper is Copyright ©Hyman G. Darling and was downloaded from Professional Financial Strategies, [www.professionalfinancial.com](http://www.professionalfinancial.com)***