

NORTHWEST TRUSTEE & MANAGEMENT *Services*

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by Stephen Trefts, President

SEVEN WAYS TO START A FAMILY FEUD —

“I never thought this could happen to our family” is a lament we often hear when we are called in to settle a family feud. After many years in the trust and estate management business, we have found that there are several common estate planning errors that will inevitably start a family war. When

this happens, the individual family members usually hire their own attorney, and spend thousands of dollars in legal fees battling each other. Finally, when they are financially, emotionally and physically exhausted, we are called in by the warring parties or the court to resolve the situation. So, what are the most common ways to start a family quarrel?

1. Don't plan: When people think about estate planning, they frequently focus on what will happen after death. However, the real family problems often start when an individual becomes incapacitated. If a person dies without a Will, state law dictates who inherits the bounty of the decedent. Although this is not ideal, and may not represent the wishes of the decedent, it is at least clear. Obviously, it is better to have a Will.

However, if one becomes mentally incapacitated due to an accident, illness or advanced age and there is no legal document (such as a trust or durable power of attorney) in place to direct who provides care and financial assistance, then the only way to determine who makes decisions is through a court appointed guardianship. This is expensive, intrusive, and often tears apart family relationships, particularly if the parent or other siblings challenge the child petitioning the court for the guardianship.

2. Make a Bad Plan That Ignores Family Dynamics: Recently we were faced with a situation in which the parent's assets

were in a trust, but the parent had appointed two warring children as Co-Attorneys in Fact under a Durable Power of Attorney. As Attorney-in-Fact, each child could individually make decisions for the parent. In such a case, third parties, such as medical and care providers are confused about who has authority to make decisions for the incapacitated parent. The result was that the parent was in the middle of a tug of war between the children that has adversely affected her life.

Another common error is to divide the entire estate equally between children, ignoring disabilities, emotional disorders, legal problems or addictions, which often results in misuse of an inheritance in ways that are not helpful to the heirs.

Often a bad plan comes from an outdated Will or Trust. In a recent case, a terminally ill individual wanted to change an old Will in which he had left the majority of his estate to an ex-spouse and a former significant other, rather than to his children. Unfortunately, he died before the Will could be changed and the former significant other was appointed as the Personal Representative for the estate. As could be expected, an expensive legal battle ensued. The Personal Representative, who was inexperienced in handling the complexities of the estate and the difficult relationships, was removed by the Court and we were called in to settle the matters.

3. Put the Wrong Person in Charge: In another situation, a parent relied on an unethical son to provide financial assistance. Unfortunately, the son embezzled substantial assets from the parent. Instead of getting much needed legal help, the parent created a Will appointing another family member to serve with the son as Co-Personal Representatives. After the parent died, the other family members immediately began litigation and the Court removed the co-personal representatives and appointed us as the administrator of the estate. Much trauma and expense could have been avoided if the parent had picked the right person to provide assistance in the first place.

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SEVEN WAYS, *continued* —

4. Put the “Excellent” Child in Charge of a Sibling’s Inheritance: This is a variation of the above-mentioned theme and it has often brought us into a trustee relationship. Oftentimes, the parents will select a sibling to be a trustee who is intelligent, successful, kind and who loves the family. The problem is that a trustee often has to make difficult discretionary decisions that dramatically affect the lives of the beneficiaries. After making the right decision as a trustee, the sibling trustee often falls out of favor with the sibling beneficiary, who may be emotionally, physically or mentally handicapped. Frequently, a family member who was appointed as a trustee will say to us: “I would rather love my family than be a business manager or life coach to them.”

5. Be Secretive About a Plan and Don’t Account to the Beneficiaries: In order to avoid future conflicts among the family I always advocate that parents tell their children what they have decided and most importantly, why they have decided on a plan. This is particularly true when making large charitable trust distributions or charitable bequests through a Will. Many times parents may have charitable provisions in their estate plan. However, when the children are surprised to find out about their parents’ philanthropy with “their inheritance,” they hire their attorneys to claim “undue influence,” “incapacity,” etc.—not exactly the legacy intended. A similar axiom is also true if an individual personal representative or trustee does not account to the heirs for every penny of income and expenditures. In two similar circumstances heirs sued personal representatives for failure to account and properly administer their estate. The Superior Court in both instances removed them and appointed us to professionally manage the estates and provide clear ac-

counting to the heirs. The expense and emotional trauma could have been avoided with clear accountings.

6. Hire the Same Advisor to Represent Conflicting Interests: While this seems like an obvious pitfall, it happens too frequently. Recently we were the trustee for an elderly client who was represented by the same attorney who represented the client’s son. The son, in an effort to seize the parent’s money, used the attorney in an attempt to have the parent declared incompetent and thus nullify the parent’s trust. The son did not succeed. Along with others, I testified at a disciplinary hearing for the attorney and eventually the Washington State Bar Association recommended full disbarment to the Supreme Court; however, the attorney was suspended from the practice of law by the Court. This result did not make up for the irreparable damage to the parent-child relationship and the costly legal fees.

7. Plan for Incapacity, But Don’t Give Up Control: In the rare circumstance, parents have all the documentation in place—Wills, a Trust with incapacity clause, Powers of Attorney, etc. and they sense they need help to implement their plan. This protection against one’s own incapacity avoids overreaching by family and “friends,” thus shielding individuals against scams and the wasting of their assets.

A few years ago we were contacted by an attorney in Wenatchee who represented elderly clients whose business partner was taking them to the cleaners. These clients instead of protesting the “loss of our independence” recognized that they needed help in a complex situation. They agreed to utilize our services in their trust and we preserved a \$700,000 piece of commercial property. They are now living comfortably in a retirement facility while we are taking care of all of their financial needs.

In conclusion, it is fairly easy to start a family fight that nobody wants. It is hoped that to be forewarned is to be forearmed so that instead of passing confusion and distrust to children, a legacy of love can be conveyed to the next generation.



WHITNEY HILL VANDENBURG JOINS FIRM —

Whitney Vandenburg has joined our firm to assist with information storage and provide administrative assistance to the trust officers. A recent graduate of Whitworth University, Whitney majored in French literature and theology and enjoyed studying in France for a semester.

A native of Spokane, and a recent newlywed, Whitney enjoys hiking, cross country skiing and snowshoeing with her husband. A few years ago, Whitney was “famous for a day” when the local newspaper published an article about her climb of Mt. Whitney with her father. When not pursuing outdoor adventures, Whitney enjoys reading and spending time with friends and family.



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