Preventing Trust and Estate Disputes

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The death of a loved one should be a time for a family to come together.

As a trust and estate litigator, unfortunately, I often see families fall apart. Every family's situation is different, but certain issues seem to exist in most estate and trust disputes. Addressing those issues prior to death can be uncomfortable, but doing so may prevent family disharmony and expensive litigation in the long run. The issues I see most often in my practice are as follows:

1. **Subsequent Marriages:** When a surviving spouse is not the parent of a decedent's surviving children, issues inevitably arise. The surviving spouse is often the recipient of a decedent's wealth for the remainder of his or her life while the decedent's children stand to inherit what remains. This creates an obvious tension between a child's sense of entitlement and desire to preserve family wealth, and a surviving spouse's needs, spending habits, and the availability of other assets. Addressing this inevitable tension in advance can prevent a myriad of problems.
2. **Unfulfilled Expectations:** An individual's estate plan is his or her personal business. No one is entitled to know how a person decides to distribute his or her wealth upon death. At the same time, an estate plan that is not in conformity with verbal expressions of intent prior to death can create disappointment and distrust. An heir whose expectations do not match what a document provides is more likely to look for methods to challenge that document than an heir who knows what is coming.

3. **Sibling Issues:** Parents want to think their children will get along when they pass, but siblings often harbor deep-seated emotions that rear their ugly heads when a parent who was the family glue passes. Feelings of exclusion, unfairness, preference, disrespect, entitlement, or general discontent in addition to disparate financial needs and positions among children can give rise to all sorts of behavior and disputes. Provisions in a will that require children to agree or make mutual decisions are often the source of difficulty rather than unanimity. Appointing a neutral decision-maker instead of favoring one child over another in a fiduciary role, not creating joint interests among children, and providing clear instructions are just a few ways to prevent sibling issues from disrupting an estate plan.

4. **Preferences and Disinheritance:** It may be obvious to you why your will leaves more to one heir than another or why you have chosen not to leave an heir anything, but disproportionate distributions and disinheritance may not be so obvious to those left behind. Addressing such issues with your heirs and your estate planning professionals in advance can go a long way to preventing questions that lead to litigation after your death.

5. **Manipulation and Undue Advantage:** When an individual's ability to make decisions becomes compromised or an individual becomes overly reliant on another individual for care, companionship or support, the opportunity can arise for unfair advantage to be taken through manipulation, influence, or abuse. Putting measures in place to protect you and your assets from someone looking to take undue advantage is an important piece of the estate planning process.

6. **Missing Originals:** In this age of electronic documents and paperless files, the importance of maintaining the originals of estate planning documents may be overlooked. However, missing originals or keeping originals in a place where they may be accessed, destroyed, or altered by others can be the source of problems down the road. Preserving original estate planning documents and making sure they remain safe is an important aspect of preventing unnecessary litigation down the road.

It has been said that money is the root of all evil. From my perspective as a trust and estate litigator, the desire to obtain an inheritance can cause grown children to behave very badly. Fortunately, much of this behavior can be prevented with forethought, planning, and precaution if you seek to anticipate what issues might exist in your family that could lead to trust and estate litigation and you take the initiative to plan for such problems, even if you think a dispute will not arise. In the end, the expense and emotional toll of trust and estate litigation diminish the intended transfer of wealth and splinters family relationships. Addressing the issues that give rise to such litigation in advance, even if doing so requires some
difficult conversations and a little extra expense, is well worth it in the long run.

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