

18 Recommendations for Minimizing Inheritance Conflict

by [Mark Accettura](#)



You worked hard to build your nest egg. You saved, invested wisely and were careful to manage the myriad of risks that threatened your life's savings. Having invested so much time, effort and sacrifice into getting where you are, it only makes sense that you would like to pass your life's work on to your loved ones with the least amount of tax and government interference.

There are well-established tools to ensure that your financial legacy reaches the intended recipients. Wills, revocable trusts, irrevocable trusts, family limited partnerships (and LLCs), private foundations, and an alphabet soup of strategies—like GRITs, GRATs, CRUTs, CRTs, and QPRTs, to name a few—make estate transition efficient and tax free for all but the truly wealthy, and therefore are an indispensable part of a secure financial plan.

Your Most Valuable Asset

But this article is not about current estate-planning strategies. Although an important subject, and one that occupies the estate planning community and the clients we serve, I want to talk about your most valuable and enduring asset, the asset that for better or worse survives you and impacts generations to come: family.

Family is truly the gift that keeps on giving. The family dynamic that you had a hand in creating will survive you, impacting your children and grandchildren. Although many of the events that went into forming your family as it now exists have already occurred, your family is not set in stone. How you live your life from this point forward and how you structure your estate at death are new opportunities to reinforce the healthy aspects of your family, correct past wrongs, and leave a lasting legacy of fairness, compassion and love.

Family survives long after an inheritance is either spent or is tucked away in the accounts of our beneficiaries. Despite our greatest efforts, wealth comes and goes. Even great wealth is often gone in a generation or two. History is replete with stories of successful entrepreneurs who amassed fortunes only to have them wasted within one or two generations after their death. The aphorism “shirt sleeves to shirt sleeves in three generations” describes this phenomenon and is said to derive from an old Lancashire (England) proverb “there’s nobbut three generations atween a clog and clog,” believed to have been imported to America by Andrew Carnegie. The transience of wealth has been lamented by many other cultures. The Italians, for example, in their classic lyrical style have an old expression: “Dalle stalle alle stelle alle stalle” (“from stalls to stars to stalls”).

In addition to the transmission of wealth, our estate plan communicates many things to those we leave behind. We say who is remembered, who is loved, who is important, who we trust and who we trust to be in charge. It carries additional weight, because it is our final statement. Unlike fights or misunderstandings during life, we cannot take back or fix the insensitivities, oversights or hurtful provisions of our estate plan. The greatest slight is to not plan at all. By failing to plan, we communicate our apathy and the message that our loved ones were not worthy of being remembered. With so much at stake, we owe the process as much attention and thought as we can muster.

Anticipating and Avoiding Conflict

It is especially important to anticipate conflict. Inheritance conflict is often the final straw for challenged families, with members vowing to never speak to one another again. Special circumstances require special planning. If you have re-married, you must balance the financial and emotional needs of your spouse with those of your natural children. If your children don’t get along, then you must choose fiduciaries carefully. Other unique factors require special attention, like a family business, a family cottage, or a handicapped or addicted child.

Ideally, as the parent, you should lead in the prevention effort. You are in the best position to create family peace and minimize future fighting. Use your position, perhaps as you never have, to build bridges and mend fences. You may not ultimately be able to undo the old hurts that brought the family to its current state, but you must never stop trying. You can best lead by having your estate affairs in order. Similar to succession planning in business, you need a transition plan and a transition team to implement your vision. Now is the time to take stock of your family portfolio. As the family CEO, you can implement a plan and secure the future course for your family and your assets.

The stepparent-stepchild relationship is particularly fraught with problems, as both vie for the love and affection of the natural parent. Children have difficulty understanding that their natural parent is, or was, a person with real needs that the stepparent fulfills or at one time fulfilled. Children must also understand that the stepparent has legitimate concerns about his or her economic well-being after the death of their spouse. Stepparents, in turn, must understand that children see their parent’s inheritance as the final statement of love and that the stepparent is perceived as interfering with that connection. Finally, the natural parent in a second marriage must be sensitive to the personal dynamic between his children and the new spouse and take every step possible to keep the peace between both camps during life and after death.

Actions That Can Reduce Conflict

There is no single silver bullet that will prevent inheritance disputes. Instead, prevention requires a multi-faceted approach that combines psychology, good lawyering, a lot of self-awareness and a good dose of common sense. The following 18 recommendations are aimed at minimizing inheritance conflict:

1. Address personal property separately

Leave a separate list of cherished personal property with instructions as to who should inherit each item. Personal property is often a source of conflict among family members.

Most states admit a separate personal property list (sometimes called a Personal Property Memorandum) as part of the will. A separate list can be handwritten or typed but must be signed and dated.

The list should be of sufficient detail to effectively describe each item being gifted.

2. Update estate plan regularly

Make estate planning changes when there has been a change of circumstances, especially after a divorce.

Although most states' matrimonial laws nullify beneficiary designations and will provisions that favor former spouses, it is unclear whether a former spouse continues to be empowered under medical or financial powers of attorney. To avoid unwanted and bizarre results, former spouses should be immediately disinherited and stripped of all powers.

Additionally, estate planning should be reviewed after other life changes, like the death or divorce of a child or the illness, addiction or incapacitation of any beneficiary.

3. Hold an open discussion on special assets

There are situations where family input is advisable. Issues like care for a handicapped child, succession of a family business, or continued enjoyment of a vacation home require parents and children to be on the same page.

4. Consider a prenuptial agreement

Second marriages are one of the most significant indicators of inheritance conflict. A prenuptial or a post-nuptial agreement will minimize conflict at death by clearly stating the relative entitlements of spouses and other beneficiaries, such as children not of the marriage.

5. Clearly identify gifts and loans

Parents often help adult children who are experiencing financial distress. It is the parent's prerogative to structure such advances as either loans or gifts. Unpaid loans from mom and dad can be a source of conflict, activating jealousies about who got more. Parents should resolve uncertainty regarding lifetime advances by addressing them in their estate plan.

6. Properly fund trusts

All assets should be funded or appropriately re-titled into a trust to avoid probate and confusion as to the testator's intent. For example, if the will or trust leaves equally among the testator's children, all life insurance policies and annuities should name the trust as beneficiary.

If for tax or other purposes it is appropriate to name beneficiaries directly, include a statement in the trust that all beneficiaries are to receive an equal share, taking into consideration assets that pass outside the trust.

7. Avoid joint ownership

Joint ownership (i.e., placing a child's name as a joint owner of a parent's asset) is an inefficient method of passing assets at death and can produce unintended results. Adding a beneficiary as an owner of assets like real estate confers significant and sometimes irrevocable lifetime rights, which expose the donor to the co-owner's liabilities and limits the donor's ability to change his or her mind in the future. The most efficient and predictable plan is to fund all assets into a trust.

8. Pre-arrange funeral details

Making funeral arrangements and choosing the form of interment in advance can avoid conflict and the strong emotions that such decisions sometimes elicit. For example, re-married widows and widowers should determine in advance who is to be buried with whom. Pre-planned and detailed written funeral instructions avoid controversy and angst.

9. Name spouse as primary fiduciary

Absent special circumstances, one's spouse in a first marriage should be named as primary and sole fiduciary. As recently as the 1970s, well-heeled husbands, even in first marriages, commonly named bank and trust companies as trustee of trusts established for their wife and children. Today, such arrangements would be unacceptable to most wives, as women have become full participants in the family economic unit.

In second marriages where there are children not of the marriage, each spouse should consider establishing his or her own separate revocable trust. While each spouse may act as the other's fiduciary, it may be preferable to appoint a neutral third party or professional (corporate) trustee to mediate the disparate interests of the surviving spouse and natural children. It is not advisable to name a spouse as co-fiduciary with children not of the marriage. Stepparents and stepchildren are natural competitors and in most cases should not be forced to work together.

10. Make logically defensible choices

Determining who is "in charge" is an emotionally loaded issue. It is perceived as the testator's statement as to who is the most competent and trustworthy. Such decisions are reminiscent of the day when mom went to the store and put one of the children, usually the oldest, in charge. Mom hadn't left the driveway before younger children would protest: "You're not the boss of me," or more prophetically, "Who died and left you in charge?"

Appointing fiduciaries can be seen as an act of favoritism and should be thoughtfully considered. Naturally you want the best person for the job to ensure that your wishes are properly carried out. However, parents must still be sensitive to their children's emotional reactions.

Children can rationalize an older sibling being appointed simply on the basis of seniority. They can also accept the naming of in-townners over out-of-townners on the basis of convenience and geographic desirability. Children, however, cannot accept appointments that disturb the traditional family hierarchy and pecking order.

Where children are equally situated, appoint them as co-fiduciaries. Don't leave anybody out; name a younger or less-able child as successor to a successor if for no other reason than to show that you remembered them.

11. Be aware of long-established sibling roles

In addition to age, name children on the basis of traditional family leadership roles. It is an insult in the order of disinheritance to take a leadership role away from a deserving child who has traditionally held that role and served it well.

12. Appoint a committee

Naming a committee of fiduciaries has a number of benefits: Two heads are better than one; a committee keeps each member honest; communication with non-fiduciary beneficiaries is facilitated by having more than one spokesperson; and multiple fiduciaries can share the work load and minimize burnout and resentment.

Misunderstandings can quickly escalate when a single overburdened fiduciary fails to respond to beneficiary inquiries in a timely manner. In turn, a single fiduciary may resent repeated inquiries from what they perceive as greedy or overly-eager beneficiaries. The failure of an overburdened fiduciary to respond to inquiries in a timely manner raises suspicions that the fiduciary is trying to hide something.

A committee solves many of these problems and should be considered, as long as all of the members of the committee get along.

13. Recognize primary obligation when in first marriage

Except where extenuating circumstances dictate, in first marriages one's surviving spouse should be named primary and sole beneficiary. A testator's first obligation is to his or her surviving spouse. As children can no longer be expected to care for ill or aging parents, spouses must leave each other in the best possible position to provide for their own needs. The risk that children will be disinherited is minimal, as they are the logical beneficiary of both spouses.

14. Balance the needs of second spouses and children

Care should be taken to accommodate the financial and emotional needs of both the surviving spouse and children. Consider an outright transfer to natural children at the

death of the first spouse of an amount that will not jeopardize the well-being of the surviving spouse.

Parents who completely withhold all distributions to their children until after the death of a stepparent create a potential deathwatch. There is no impatience like that of a stepchild waiting for their stepparent to die in order that they may receive what they believe to be rightfully theirs.

15. Leave to children equally and disinherit only as a matter of last resort

Treat children equally. An unequal allocation is a blatant and unforgivable showing of favoritism that will re-activate old sibling rivalries and hurt feelings.

Children have unequal needs growing up. Some will naturally receive more based on special skills (travel sports, private schools, piano lessons), or special needs (braces, glasses, special shoes, or furlough from physical labor). However, the past is the past; don't be tempted to leave unequally at death to account for early inequities.

Don't penalize successful children by leaving more to their needy siblings, or conversely, reward successful children because they are favored. Exceptions to this general rule are the truly handicapped and those who would use their inheritance to further an unhealthy lifestyle of addiction or sloth.

Finally, be certain before you disinherit, as it leaves a lasting legacy of hurt and rejection.

16. Make lifetime gifts

Attempt to accommodate special needs through lifetime gifts. Lifetime gifts, like a dowry for a daughter or a stake for a son, have been used throughout history to accomplish inheritance objectives.

Be aware, however, that children have extremely sensitive antennae for detecting favoritism and are likely to become aware of such gifts.

17. Transition family business

A family business should pass to those family members who have been active in the business and who are instrumental to its future success. The fragile nature of businesses requires that there be a smooth transition from one generation to the next.

A seamless transition requires the gradual passing of the torch while parents are alive. Parents should groom their successors by gradually transferring responsibility and authority to their successors over time.

Non-business assets can be used to equalize the share for children not active in the business. Life insurance can be used to augment the value of the estate to ensure that sufficient assets are available to achieve an equal distribution to all children.

18. Keep estate planning content private

Clients often ask whether they should give a copy of their estate plan to their children. With the exception of health care powers of attorney (living wills), the answer for most families is “no.”

As in the movie “Back to the Future,” you don’t want knowledge of the future to affect the course of history. As author, you reserve the right to change the ending of your personal history. Giving documents during life creates the expectation that no changes will be made. Later changes will be viewed as taking away something previously given. We don’t know the future; keep open the possibility that things may change.

Conclusion

Many of the problems of inheritance are themselves inherited. They are both genetic and acquired, but they are not inevitable. Inheritance disputes can be explained and predicted and are to a large degree preventable. By carefully and thoughtfully planning your estate, you can protect your most important legacy.

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