

10 Estate Planning Steps to Avoid Fracturing of Families



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In addition to representing trustees and executors named in estate plans that our firm has prepared, I also advise and represent clients in estate administration and litigation matters for estate plans that we did not create. While every family and estate plan is unique, when I review disputed or contested estate administration cases and the circumstances that are most commonly present, I see a number of repeated themes and factors that make disputes either more or less likely.

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There are a couple of major factors that effect the likelihood of estate disputes that you might not have a lot of control over. First, if your beneficiaries simply do not get along with each other or are generally litigious, the odds of a dispute will be much higher. If beneficiaries want to fight badly enough, they can usually find a reason. Second, “mo money mo problems” — the more there is to fight over, the more reason there is to fight.

But whether your estate is large or small or your children get along famously or infamously, there are some affirmative steps that you can take to minimize the likelihood of an estate dispute or contest.

Based on the themes we see repeated time and again, here are 10 tips and considerations for planning your estate to avoid or minimize family inheritance disputes:

1. Create an estate plan while you are healthy and of sound mind

If you wait for an illness to create an estate plan, you either may not get it done or may not be in the best position to communicate your wishes clearly or work most effectively with an attorney. When you're ill, you want to focus on your health and not be burdened by decisions that can be better addressed in advance. [You can order you FREE Health Care Directives here.](#)

Estate plans that are created or changed during illness or toward the end of life increase the chance that issues over your capacity to execute a will or trust will be raised. This is not to say that plans cannot be changed late in life, but they do require extra precaution.

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2. Seek quality independent legal advice free from undue influence

Historically speaking, Do-it-yourself plans have been more susceptible to challenge and ambiguity. However, the customized **eStatePlan™** documents prepared by our attorney firm can help ensure that the plan was not created, or unduly influenced, by a beneficiary. The attorney's expertise and **file documentation** can help minimize ambiguity and **document your intentions**.

The attorney selected should be independent (not your child's best friend who is an attorney) and experienced in estate planning — not the attorney that won your PI case and will make your Will for a hundred bucks.

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3. Use a revocable living trust to avoid probate

Estate planning with a **funded revocable living trust** will usually keep your estate out of probate court. While **probate** in itself is not necessarily a contentious proceeding, it does provide a ready and accessible forum for heirs and beneficiaries to do battle.

Probate notices must be sent not only to beneficiaries, but also to heirs that you may have otherwise disinherited. Trust disputes can also be brought into court, but it tends to be less likely without the requires notices, statutory rights and existing court proceedings.

4. Choose executor and trustee succession wisely

Think about the relationship between the fiduciaries, beneficiaries and terms of your trust. Consider what conflicts could arise during administration. The wrong combination can create and foment conflict. Provide trustees with an exit plan and appropriate trustee succession.

In some instances naming co-trustees can minimize conflict, but in others it may create conflict. If beneficiaries are likely to fight, consider naming an independent trustee, such as a **trust company**. Above all else, the trustee must be trustworthy.

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5. Explain different or unequal treatment of beneficiaries

Anytime an **Estate Plan** varies significantly from expectations or treats similarly situated beneficiaries (e.g. multiple children) differently, there is an increased chance for dispute and litigation. This is not to say that you cannot or should not do this, but extra care and diligence should be exercised to ensure that the plan will be upheld if contested.

Our proprietary process handles that concern easily when we utilize our Specific Trust Directives within each Client Console. Setting expectations in advance will always be very helpful. If distributions will be unequal, an explicit "Trust Directive" will be helpful as a deterrent to litigation.

6. Address division and distribution of personal effects

Hands down the most common category of estate disputes involve tangible personal property. The basic reasons are twofold: (1) it's easy to divide a bank account into equal shares; it might not be so easy to divide jewelry or collectibles into equal shares, and **(2) personal effects often evoke emotion.**

There are a variety of strategies that might work best in a given situation, but generally it's best to: (1) have a frank conversation to discuss your beneficiaries' wishes and expectations, and (2) reduce your directions to writing, in a memorandum or list of specific gifts or directions referenced in your Trust. Having the discussion without the writing can lead to unmet expectations and disputes over verbal promises.

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7. Address the effect of any lifetime gifts, advances or loans

Have you made intra-family loans or provided informal family assistance? Perhaps you've assisted a child with starting a business or purchasing a home. If so, it's important not only to set the expectations during your life, but to identify how these transfers are treated at death.

Was the transfer an advance on inheritance, and if so, will there be sufficient liquidity? A loan to be repaid with interest? A gift? Do you want loans to be forgiven upon death? And what are the tax consequences of the various options? You may know how you characterize the transfer, but does your family? If these types of transfers apply, we can address them during the estate planning process to avoid confusion and disputes using our "Specific Trust Directives" Apps table.

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8. Be mindful of the consequences of joint asset ownership

If you create a living trust, you will generally want to title most of your assets in your trust. Small assets in your sole name can be poured over into your trust at death by Will.

But what about joint ownership? It's not uncommon for a parent to add a child to a bank account to help with the finances. This creates a presumption of a gift, meaning that the account belongs to the joint owner upon death. Was that really the intent? Convenience accounts are the source of many disputes and probate litigation and can create major havoc for estate planning purposes.

9. Make sure to update beneficiary designations regularly!

Certain assets (e.g. retirement accounts, IRA's, 401(k)'s) cannot be titled in your trust. However, our [eStatePlan™](#) is an vitally important tool to coordinate the designation of beneficiaries and distribution for these assets with the terms of your trust and monitor on an ongoing basis.

If separate accounts are payable to certain beneficiaries, then it's important to consider the effect that an increase or decrease in the value of these accounts might have on the disposition of your assets. It's also important to update designations after important life events — divorce, birth, death, etc.

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10. Monitor and update your estate plan

Estate planning is a lifelong process, not a one-time event. Plans should be reviewed periodically and **updated** based on changes in the law and important life events for yourself and your beneficiaries — birth, marriage, divorce, death, etc. It is also critical to monitor your assets and your beneficiary designations.

We've all heard the news stories about celebrity estate disputes. Many have probably seen or **heard stories** from family or friends who have been embroiled in estate disputes or litigation. In many cases, these situations are avoidable through thoughtful planning and deliberate steps to avoid estate planning mistakes that can generate disputes.

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