

Is Your Estate Plan Bulletproof? Techniques to Help Avoid Fighting Later

An inherent problem with wills and other estate planning documents such as trusts is that, when the time comes to put them into action, you won't be around to explain or interpret them. Fortunately, there are strategies you can use during your lifetime to minimize the risk of a fight over your estate after your death.

Treat Heirs Fairly

If someone succeeds in getting your will or trust thrown out in court, your estate will be distributed as if you had no will or trust — that is, according to the laws of intestate succession. The more closely your will or trust follows those laws, the less your heirs have to gain by contesting it. So, for example, an effective defensive strategy might be to provide equal shares for your children (including stepchildren).

Treating heirs equally can be a safe strategy for many families, but it can backfire if there are children from multiple marriages. Suppose your daughter from your current marriage is a college student and you have a financially independent son from a previous marriage. If you treat them equally, your daughter, who likely needs more financial help, may view your plan as unfair.

Explain Yourself

You may have sound reasons for treating heirs unequally or leaving a substantial amount of your wealth to charity. Perhaps you follow Warren Buffet's philosophy that the right amount to leave your kids is "enough money so that they ... feel they could do anything, but not so much that they could do nothing."

To avoid disputes or disappointment, it's wise to explain your reasoning to your family during your life.

Make Disinheritances Explicit

There's a reason it's called "writing someone out of your will." If you simply leave a child out, he or she may contest your will, claiming the omission was an oversight. But if you spell out a disinheritance in writing, your intentions will be clear. Keep in mind that state laws typically make it difficult or impossible to disinherit a spouse.

Be cautious when providing reasons for disinheriting someone. For example, if you state that you're disinheriting a child because he or she is "financially independent," you may open the door to litigation over the meaning of that term.

Preempt Challenges to Your Mental Capacity

Will contests often involve claims of undue influence or lack of testamentary capacity. There are several techniques for avoiding these challenges, such as obtaining a written evaluation by a physician or psychiatrist and choosing witnesses who can attest to your mental capacity and are expected to be alive when you die.

Another option is to videotape the execution of your will. But this approach can backfire. For example, if you're nervous in front of the camera, your discomfort may be misinterpreted as duress or confusion.

Appoint a Professional

Many people name a trusted child or friend as executor or personal representative of their estate or trustee of their trust, but this can sometimes lead to abuse-of-power claims. You can reduce the likelihood of these disputes by appointing a paid independent professional.

A professional executor, personal representative or trustee offers the added advantage of expertise and experience handling estates. Some people also appoint an institutional fiduciary, such as a bank or trust company.

Minimize Litigation Risk

These are just a few examples of the many strategies you can use to "bulletproof" your estate plan. Your estate planning attorney can help you design a plan that achieves your goals while minimizing litigation risks.

Own a family business? Consider selling it to your child

Let's say you own a family business and want to leave it to your son John, who works in the business with you. If you're concerned that your other children may object, consider selling the business to John during your life.

It's more difficult for siblings to challenge a lifetime sales contract than a bequest in a will. There are several techniques available — such as installment sales and sales to intentionally defective grantor trusts — that allow you to spread the payments over many years and minimize the tax impact.

The Law Office of Eugene Gorrin, LLC
17 Watchung Avenue, Suite 204
Chatham, NJ 07928
973.701.9300
egorrin@gorrinlaw.com
www.gorrinlaw.com