

Planning Ahead Can Discourage Family Fights

By Samantha Critchell
The Associated Press

NEW YORK (AP) The topic of death does not make for pleasant dinner conversation but it's better discussed sooner rather than later, when family members might not be willing to sit at the same table with one another, says Les Kotzer, a wills and estate lawyer.

Proper estate planning doesn't just mean saving relatives a few bucks in taxes, it also means sparing them from custody battles, fights over personal items and questions about competency, says Kotzer, who wrote "The Family Fight: Planning To Avoid It" (Continental Atlantic Publications) with fellow attorney Barry Fish.

"This is not the stuff that goes to court but they are fights that happen in our offices," says Kotzer.

He adds, "A dispute over \$20,000 is not worth going to court over but it can destroy a family."

The book is intended as a guide to help families bring up subjects they'd rather avoid.

It explains the difference between powers of attorney and wills (power of attorney outlines an individual's wishes while he's living but incapacitated, while a will explains an individual's wishes after his death); questions to ask potential guardians of your children; suggestions for choosing an executor; and dealing with relatives who might feel slighted by your choices.

One universal tip from Kotzer: The executor of an estate and the designated guardian for minors should be different people to avoid any conflict-of-interest arguments. The executor typically acts as the trustee overseeing a child's trust and will make decisions about investments and disbursements.

Also, only one person should be named guardian, not a couple, so a divorce many years down the road wouldn't affect a caregiver's status.

Parents, especially those with young children, should outline a "backup ladder" of other potential guardians, Kotzer advises, in case something happens to the first-choice caregiver.

Make sure the executor and designated caregivers – for both yourself should you become incapacitated and your children – want the job. "People treat it as an issue like picking a best man (for a wedding) but being an executor is not an honor, it's a tremendous job," Kotzer observes.

Personalities, lifestyles and sentimental factors need to be considered in choosing responsibilities and bequests, and then everyone involved should be consulted.

"You don't want anyone to be surprised. People should know what's in your will before (it's needed)," Kotzer says.

"The Family Fight" not only addresses younger adults who likely are drafting their first estate-planning documents, but also older adults who haven't reviewed their wills in years.

"This is for the 'sandwich generation,' baby boomers who are caregivers to two generations," says Kotzer.

And, he adds, at every life change, ranging from marriage to moves, all of the decisions should be reconsidered. In some jurisdictions, marriages or divorces immediately nullify pre-existing wills and

power of attorney documents.

He also notes that second marriages can cause complications for children of first marriages since a spouse often gets control of an estate. The spouse is under no obligation to consider the interests of children from the first marriage unless it is specified.

No change should be made hastily or during a flash of emotion because it might be harder to revoke if one's health begins to deteriorate.

Kotzer says the wording of each agreement should be as specific as possible. "If you say 'I leave all my antiques to my daughter' but don't define 'antiques' then someone will ask 'What about the coveted 1960 clock?'"

Parents don't intend to cause discord between children when drafting a will, but even saying "split it" leaves too much room for interpretation and fights, Kotzer warns. Does that mean split it by personal preferences? Market value? Actual number of pieces?

The fights aren't always over money; they are about memories and the child who feels slighted. The biggest battles Kotzer says he has seen have been over photographs or even a dish.

Lack of preparation can spur family fights after someone becomes incapacitated or dies, says wills and estate lawyer Les Kotzer, and the lack of organization adds to the discord and confusion.

"The Family Fight: Planning To Avoid It" offers a recommended record-keeping checklist.

The following is a partial list of information that should be available to a trusted relative or friend:

- The location or locations of all of the financial institutions with which you are dealing.
- The name, address and telephone number of your employer, or if you are self-employed, of your partners and business associates.
- The name of your stock broker, accountant and lawyer.
- The location of your file copies of tax returns.
- The location of your birth and marriage certificates, and, if you were adopted, your adoption papers.
- The location of your will, any codicils and any durable powers of attorney for property and health care.
- The location of your prepaid funeral plan documentation.
- Codes to any home, office or other real estate alarm systems. Record all of your access codes for automobile, office and garage door entry systems, and computer passwords.
- The location of the insurance policy or other document generating a death benefit if your estate or any particular beneficiary is entitled to one. Also, provide the addresses and telephone numbers of the brokers and insurance companies involved.
- A list of all the real estate you own, either alone or together with any other party. If there are mortgages or leases, specify that as well and whether there is any life insurance payable upon your death which could eliminate a mortgage loan on any such property