

## Protect Your Family's Financial Future: Estate Planning Today May Prevent Estate Litigation Tomorrow

By Carole B. Sheffield

**E**state litigation is on the rise. More often than not, such litigation is the result of poor estate planning.

This article presents a number of common estate planning oversights, beyond the obvious “no estate planning at all,” which are known to trigger estate litigation. Please keep in mind that there are no guarantees that today’s sound estate plan will survive tomorrow’s devious challenge by a willful party. On the other hand, courts consistently uphold thoughtful estate plans when properly implemented.

As Americans live longer, elder abuse occurs more frequently. Notably, though, elder abuse is no longer isolated to physical harm in nursing homes. On the contrary, today’s elder abuse often occurs when an aging parent’s middle-aged child exerts undue influence over the often incapacitated parent for financial gain. To protect their parent, the other siblings then find themselves in a bitter and expensive sibling-rivalry court battle to appoint a guardian.

Could this scenario have been avoided? Likely yes, because had the incapacitated parent planned his or her estate when in good mental health — executing a durable power of attorney, appointing trusted fiduciaries and communicating specific intentions — the opportunities for abuse would be far more limited. However, elder abuse is only one example of why estate litigation has increased.

### One Big Happy Family

During the estate planning process, spouses often assert without hesitation that they are happily married and their children all get along beautifully. For most families this is true. However, as the estate planning process unfolds, family personalities emerge to reveal just how functionally or dysfunctionally family members relate.

The following examples illustrate the various ways families find themselves unwittingly setting the stage for possible future legal disputes.

*Unequal Gifts to Children.* Favored children, who become favored beneficiaries in their parents’ estate plans, unwittingly encourage the long-suffering disgruntled siblings to revert to litigation. Children regularly equate unequal gifts with unequal love. Communication with the other children explaining the reasons for the unequal treatment, while difficult, may avert litigation.

*Disinheriting a Child.* Another dramatic way to expose the estate to litigation is to disinherit a child. In this instance, it is only the disfavored child who is intensely hurt, and may look to the court to alleviate the pain of rejection. This is a tough situation for all family members. Depending on the reasons for the disinheritance of a child, you should carefully consider all options with professionals. An alternative to a complete disinheritance of a family member where irreconcilable differences exist between a parent and child is for the grandchild to inherit the disinherited child’s share.

*Selecting Qualified Fiduciaries.* Parents typically appoint the oldest child as the sole fiduciary, relying, perhaps without much forethought, on an age-old tradition. However, where the oldest child is not capable to serve, yet insists on the appointment after the parents’ deaths, the qualified siblings are often forced to remove the bungling sibling-fiduciary in a court proceeding.

“... courts consistently uphold thoughtful estate plans when properly implemented.”





## who's who

**Carole B. Sheffield** is a shareholder in the Philadelphia, PA, office of Anderson

Kill & Olick, P.C. Ms. Sheffield's practice concentrates in estate and tax planning and trust and estate administration. She handles complex matters of federal and state tax preparation of estate, gift, fiduciary income and personal income tax returns for trusts and estates. Her clients include high net worth individuals, financial institutions, closely held businesses and not-for-profit organizations.

267-216-2732

[csheffield@andersonkill.com](mailto:csheffield@andersonkill.com)

The information appearing in this newsletter does not constitute legal advice or opinion. Such advice and opinion are provided by the firm only upon engagement with respect to specific factual situations. We invite you to contact the editor Abbe Herbst at [aherbst@andersonkill.com](mailto:aherbst@andersonkill.com) or 212-278-1781, with your questions and/or concerns.

The firm has offices in New York, NY, Ventura, CA, Stamford, CT, Washington, DC, Newark, NJ and Philadelphia, PA.  
©2013 Anderson Kill & Olick, P.C.

### Be carbon conscious ... Please consider switching your print subscription to email.

By switching to email, you will receive our timely Client Alerts that are sent by email only. It's easy, send your mailing and email address to: [andersonkill@andersonkill.com](mailto:andersonkill@andersonkill.com)

**To subscribe** to Anderson Kill Newsletters and Alerts, please visit: [www.andersonkill.com/publications\\_subscribe.asp](http://www.andersonkill.com/publications_subscribe.asp).

**To unsubscribe**, please email: [unsubscribe@andersonkill.com](mailto:unsubscribe@andersonkill.com)

Tradition is often hard to overcome. But where it is clear that the oldest child, or any other choice, is ill-suited as a fiduciary, it is best to address the issue sensitively, then appoint the best qualified party.

**Multiple Marriages.** Blended families resulting from multiple marriages are notorious in the realm of estate litigation. There are myriad stereotypical scenarios too numerous to recount, but hopefully it is understood that prior to a second or third marriage, the parties' intentions should be documented in legal instruments, such as a properly executed pre-nuptial agreement with full financial disclosures, and separate legal representation for each party.

**Business Succession Planning.** Family-owned businesses are hard on a household's emotional and financial stability. To limit surprises at the death of the business owner, it is critical that all company documents, such as the buy-sell and shareholders' agreements, are thoroughly reviewed during the estate planning process and, where appropriate, incorporated into the plan.

## Are Your Documents Current and Do They Conform to Your State's Laws?

**Not Having a Will — or Worse, No Instruments to Protect You While Alive.** When you have no will, you leave your wishes at the mercy of your state's intestacy statutes. Is that your true intent? Probably not. Equally litigation-worthy is not having legal instruments to protect you while living, such as a health care proxy, living will and a power of attorney.

**Not Updating Your Documents After a Major Life Change.** It seems like common sense, but whenever something BIG happens in your life, review your estate planning instruments to make sure they reflect the change. Common life changes include births, deaths, divorces, acquisitions of second homes, inheritances or damage awards from lawsuits.

**Poorly Drafted Instruments and Required State Laws.** During the review of your instruments with your attorney, make sure to include a thorough discussion of all assets, explanations of bequests and powers, a check that all beneficiaries are correctly identified (and that none have predeceased) and that more generally, there are no spelling or typographical errors. You should also confirm that the documents and their execution conform to your state's laws.

Although the above discussion is not exhaustive, it does provide a range of estate planning dos and don'ts to help you prevent estate litigation. Consider each with your attorney, both when you plan your estate for the first time and when you revise it to accommodate changes in estate, gift and generation-skipping transfer taxes.▲

IRS Circular 230 Disclosure: To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing, or recommending to another party any transaction or matter addressed herein.

