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## 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.

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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-towners over out-of-towners 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.

→ [Mark Accettura](#) is an elder law attorney at Accettura & Hurwitz, Farmington Hills, Michigan, and author of "[Blood & Money: Why Families Fight Over Inheritance and What to Do About It](#)" (Collinwood Press, 2012).

## Discussion

**Alfred** from NJ posted over 5 years ago:

Excellent outline for minimizing conflict. This topic is generally avoided because one does not want to think of the inevitable. Family peace can be maintained, why leave a legacy of a fractured family.

**Errol** from UT posted over 5 years ago:

It is important to use a prenuptial for a second marriage. Be certain to define what assets existed at the end of the divorce and clearly state how new assets that accumulate during the second marriage are to be owned between yourself and the new spouse. Then the new trust documents for yourself and the new spouse pretty much write themselves as far as what goes to whose beneficiaries.

As far as IRA's and 401k's go, I set up the beneficiaries consistent with when the assets began to accumulate, i.e., new spouse gets her share for anything accumulated after the second marriage, but the trust for my natural children get what was accumulated before the second marriage.

The vacation home issue is one that I have not been able to resolve yet. It is a significant portion of my assets for my natural children, but none of them want the responsibility to maintain it. At the moment a bank trust division has it listed as to be managed for a fee with the value of the home being equally owned by the natural children. This is a potential source of conflict as some of the children will want to use it, others might want it sold for the money!?

**Stephen** from NH posted over 5 years ago:

The author forgets the needs of couples without sufficient assets to comfortably carry the surviving spouse through his or her remaining lifetime. Given that the survivor will lose at least one SSI (income) but will be left with the same rent, mortgage, real estate taxes, personal health costs etc. the splitting off of assets to children and starving the surviving spouse regardless of the number of prior marriages, is unreal - in my opinion.

**Michael** from MD posted over 5 years ago:

I think it is better to tell your children what is in your will so they will know what to expect upon your death. This will avoid conflict among the children as they can discuss what they might consider unfair in the will. I also think it is a good to ask each child if there is any of your personal items they would like so as their distribution can be discussed in an open fashion before being stated in the will.

**James** from MD posted over 5 years ago:

There is one issue not addressed here. If a family trust is anticipated to be long-standing then there is the burden of IRS reporting requirements upon the trustees. Especially if the fiduciary trustees are all family members. If not filed on a timely basis there will be consequences with the IRS and the complicated nature of taxable trust reporting is quite onerous.

**Steven** from CO posted over 5 years ago:

The article for me would have been more helpful defining the acronyms listed in the second paragraph and describing how they are appropriate given one's specific set of circumstances. There is good information here but it reads more like a psychological template for being fair to all of the family. People ought to be able to figure that out for themselves whereas selecting the best strategy based on your specific financial position or assets is much more difficult for the majority of people.

**Robert** from TN posted over 5 years ago:

I agree that less relationship oriented opinion in exchange for more strategic or tax related guidance would have been a good thing

**Barbara** from FL posted over 5 years ago:

How can I be certain I have selected the best Firm to act as Trustee for my childrens Trust?I have heard of too many people who have had their Trusts eroded by enormous fees charged by banks and also large firms like Merrill Lynch?

**Alan** from CA posted over 5 years ago:

Nice article. I have a family trust, but have never made a list of specific objects and directed who should get them. I'm gonna do that.

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Nice article. I have a family trust, but have never made a list of specific objects and directed who should get them. I'm gonna do that.

**Jim** from MD posted over 5 years ago:

Excellent. I plan to discuss with my Estate Attorney.

I do not believe personal property was covered well enough. If you gift items of \$100 to son #1 and

items \$500 to son #2, to keep things even, you need to say that the difference will be covered with other assets such as cash.

**Lujean** from MN posted over 5 years ago:

I am also more interested in tax related guidance.

**Harold** from CO posted over 5 years ago:

Having practiced probate and estate law for over 30 years before retirement I agree with most of your suggestions. However, the idea of appointing co-fiduciaries or a committee as fiduciaries is an invitation to disaster. If the sibilings can't get along when one is appointed having co-fiduciaries, particularly and even number, will only create insurmountable problems.

**Jean** from IL posted over 5 years ago:

Barbara - here's a link to an AAll article on selecting a trustee for an estate plan; it includes a checklist:

<http://www.aaii.com/journal/article/2-what-to-look-for-when-selecting-a-trustee-for-your-estate-plan>

--Jean from AAll

**Caryl** from CA posted over 5 years ago:

Since the author states up front that this is NOT an article about estate planning strategies, why criticize him for that? I have read many, many articles dealing with the legal/financial issues. This is the first I've seen that really delves into the human issues behind the merely pragmatic. And even though I've given thought to the emotional and psychological aspects of estate planning, I found several additional, and very helpful, points to consider. Excellent article!

**James** from TN posted over 5 years ago:

Regarding the decisions about apportioning assets among adult children (beneficiaries), there are several considerations:

relative wealth of each beneficiary; age of each beneficiary, as a guide to life expectancy; other sources of income, if any, available to each beneficiary such as working spouse or likely inheritance and amount from spouse's parents; support and help rendered during lifetime, especially later years; # of young children and their ages for each beneficiary; relative need among

beneficiaries to maintain a reasonable standard of living;and so on.

I do not think the equal share concept is valid, even if the goal is to maintain family harmony; since often the beneficiaries are adult children they should be able to restrain their greed and envy,and respect the decisions of the deceased trust owner(s,proably their parents and/or grandparents.

**Ira** from AZ posted over 5 years ago:

I am wondering how complicated it would be if I left my investment holdings to my four childred. Would it be possible or advisable to put them with an Investment Officer that is associated with the same bank where my Trust is located. Then they would have an income for the rest of their lives, instead of taking the cash when my estate is setttled.

**Evans** from GA posted over 5 years ago:

1. If you must appoint a bank as trustee then give the heirs an easy way to fire & replace the trustee - had to do it twice! Otherwise they'll fee the estate to death.
2. Both my wife's and my adult children have copies of our documents, wills. POA's, Living Trusts, etc. That way they can complain while we're alive. They don't, however, have listings of the value of the estates.
3. Second marriage with signifcant age disparity poses difficulty planning problems that I haven't seen addressed anywhere at all well.
4. My parents explained to me and my siblings at young ages that what was theirs was theirs and we ought not expect to inherit anything. That understanding early-on provided significant incentive to us to do well.

**Roger** from MD posted over 5 years ago:

I wish I had this article available when my father passed away a couple of years ago. ALI went well until the last week of my father's life, when relatives took advantage of my father's ailments and my working a continent away to change all that had been planned for years. Presenting this article to all those who participated in the unraveling might have defused a lot of the still-ongoing strife we are all having to tolerate and resolve.

**Irene Grbich** from FL posted over 5 years ago:

I would be interested in getting tips to leave an estate to siblings, -- one of whom is very close to me, and two others.

I am a widow with no children.

**David Westrate** from WI posted over 5 years ago:

After going through this when my dad died recently. When he was alive he played favorites, but he divided his estate equally between us and we all appreciated that. I believe that equal is better, rather than perpetuating the mistakes of the past.

**Ronald Kettler** from MO posted over 4 years ago:

Having recently experienced the process of finalizing a trust, here are some of the ideas I would share. First, interview at least 3 attorneys before deciding. Better yet, interview those who have been highly recommended to you. Secondly, is this person someone with whom you can work? Are they generalists or do they specialize in estate planning? Thirdly, can they communicate verbally and in written form. Some of the attorneys were excellent writers, but they were not able to communicate with a lay person. Fourth, have important questions for them to answer. Fifth, what is the process for you to review the draft document? If they seem unwilling to provide you with time to make changes as you see fit, find someone who will. Sixth, take full advantage of your opportunities to read and suggest changes to your attorney. If your attorney has worked with estate planning before, he or she may see some legal or other unintended or undesirable outcomes related to your trust. Seventh, have your trust "goals" in mind. Share them with your attorney. While the legalize can be an obstacle for a lay person, clearly the more homework one does, the better the outcome.

**Donald Griffith** from CA posted over 4 years ago:

With the changes in the Federal regulations it seems wasteful to not amend your A/B trust. It now allows 5.25 M tax-free inheritance, and that is "portable". I won't try and explain but folks check with your trust attorney. The winds are changing and you will need to change also.

**Harold Ewy** from MO posted over 4 years ago:

I and four siblings had Dad's personal property informally appraised. We then bid on those items, taking the money from the cash in the estate. It worked beautifully.

**Vern Dransfeldt** from CA posted over 4 years ago:

The sixth point suggests naming the will or trust as beneficiary of life insurance policies and annuities. Because a beneficiary statement can have the same distributive effect as a will or life insurance statement, I see no gain there. The difficulty, especially with a will, is the probate delays that likely will delay receipt of the funds that may be needed immediately by the beneficiaries. Also, it would be useful to point out that beneficiary statements for retirement plans should definitely not name a will or trust as beneficiary, to insure maximum flexibility in receipt of retirement plan benefits for tax purposes that are not possible in a trust or will.

**George Sandvig** from CA posted over 3 years ago:

I would add to the above good ideas, that an inheritance should come with an education as to the responsibility of the recipient. Kids should be taught how to invest and how to spend wisely.

**James Womack** from TN posted over 3 years ago:

My wife and I have a revocable living trust, drawn up by an estate attorney, with plenty of input by us.

We agree with the message posted earlier by "JAMES of Tennessee" that there are many good reasons to divide assets unevenly among beneficiaries. For example a grown adult might inherit your full traditional IRA, but he will also owe Federal and state taxes on the RMD each year, and will receive the RMD, presumable, over many year, and thus will be detrimentally affected by inflation; though he will be tax advantaged by the deferral of current taxes on the assets, except for the RMD. James G. of Tn.

**James Womack** from TN posted over 3 years ago:

Sorry, for this second posting.

My wife and I appointed three family members as successor trustees-2 grown children and a younger sister 65 years of age)of my husband's. In addition to the carefully detailed Trust document, we prepared a Message of Instructions for all three: identifying one of them as the financial gatekeeper (accounting for all funds and there whereabouts and distribution) in all matters, but with one additional and very large specific task, such as investment accounts; the second and third also were assigned very large and specific tasks, in addition to the general successor assignments.

We, then, agreed that the sister would have the power to mediate or arbitrate any conflict between the two siblings, including making a decision for one argument over another, and, if needed, to resolve the issue her way.as she saw fit, but not in direct conflict with the Trust itself.

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