

Beware estate battles in family



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There are three kinds of trial cases that make it to the courts concerning the deceased and their estate planning, or lack of it. They are the Cain and Abel, the evil stepmother; and the trustee you can't trust.

'Cain and Abel' refers to the sibling rivalry that has lasted since childhood and is now being carried out with high stakes in court. 'The evil stepmother' refers to the sad family dynamic that takes place when a parent remarries after either the death of the other parent or a divorce. The new spouse is viewed by the spouse's children as an interloper stealing the inheritance of the deceased spouse's children. 'The trustee you can't trust' is untrustworthy for various reasons – they may be simply naïve, negligent and

perhaps malicious. In any case, they can't be trusted.

If you have two children (or more) who fit the Cain and Abel scenario, it is difficult to eliminate the problem with mere drafting of the trust. This is really a sibling rivalry issue.

If your children have this kind of problem, don't be like an ostrich and stick your head in the sand. Deal with it now.

First, we would recommend discussing it with your estate planning attorney to see if they have any wisdom to share. A second possibility could be to get the rivals in the same room and explain to them clearly what you are intending in your estate plan, and why.

A third possibility could be to have a meeting with the rivals and your estate attorney. Have the plan reviewed in front of them and give them an opportunity to air any disappointments. If you don't want to make any adjustments to your plan, there is now a third-party witness to this discussion, who may be able to help stop litigation later on.

'The evil stepmother' challenge is also not so easy to solve. A remarriage (particularly if it takes place later in life, after the children are older and have spent most of their lives with their nuclear family intact) results in a step-parent to

whom the adult children have difficulty adjusting.

If the new spouse is younger than the biological parent, it becomes more difficult because the life expectancy of the survivor is often quite a bit longer and, under many estate plans, the children have to wait until the step-parent dies before they will enjoy their inheritance. The children can also have to sit by and watch a step-parent live large on what they consider their inheritance.

Their solution is to sue the step-parent and trustee and hopefully regain control of their inheritance.

Both the Cain and Abel and evil stepmother scenarios are not really about the money in most cases. It is about some emotional and relationship issues that are being manifested through trust litigation.

However, 'The trustee you can't trust' simply doesn't know what his responsibilities are. Ignorance is no excuse. If you are a trustee, you need to know what your responsibilities are.

So, if you are a naïve trustee, what can you do? You can either educate yourself and fulfill the responsibilities or you can resign. Unfortunately, there is little available for a non-professional to read to learn how to be a trustee.

There are three key documents

to read and understand. The first document is the trust itself. Be sure you know the trust provisions; you are obligated to manage trust assets according to the trust. The second document is the Uniform Trustee Act and third is the Income Tax Act. It is a lot to grasp, especially if you aren't used to reading legal language.

Help can come from your investment advisor. If you hire a certified financial planner (CFP) or trust and estate practitioner (TEP) who has a good grasp on trust administration, he may be able to help you understand your duties and alert you to when you really need to consult an attorney. That planner or estate practitioner should also work with you to create an investment policy statement that is written to support the trusts purposes and goals.

A knowledgeable CFP or TEP will require a complete copy of the trust because he is accepting a role as a co-fiduciary, along with you, and has to know the trust provisions and goals.

A trust is a wonderful tool to avoid probate, keep your affairs private and save administration costs in most cases; that is, as long as no one challenges the trust or its administration in court.

Three points to remember:

- Make sure your trust is drafted the way you want it and that you and your spouse or co-trustee understand it, and your responsibilities. If you don't, educate yourselves. You won't get that education at a marketing seminar, so you will have to do your own homework.

- Trust contests are more often about relationships between the parties to the trust than they are about the actual inheritance. Look hard at your family and don't be naïve about potentially harmful relationships that could cause grief when money and inheritance are introduced. Do what you can now to deal with these difficulties.

- Don't be afraid to spend a little money consulting now, when it might do some good.

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