



## **Avoiding Family Squabbles Over Your Estate**

*What steps may help assets transfer without a fight?*

**Should you rely on “will power” to bequeath assets?** The more complex your estate, the more ill-

advised that choice becomes. Having only a will in place when you die may not be enough. As MarketWatch noted recently, research from the Williams Group (a major estate planning firm) indicates that estate fights reduce inherited wealth for as many as 70% of families.<sup>1</sup>

**Inheritance is no simple matter.** In a simpler world, an individual with a \$3 million estate could pass away and simply leave \$1 million each to his or her children – enough said, over and done. But life isn’t so simple: one heir may deserve more money as a result of a disability or fate dealing out hardships, while another may truthfully deserve less due to his or her behavior, or his or her financial success.

If you feel one heir should receive more of your estate than another, that wish needs to be articulated in your estate planning. Stating these wishes before you pass away (the why, the how, the how much) and letting your heirs know how you feel isn’t cruel – candor now is preferable to confusion and in-fighting later.

**Beyond money, what about possessions and real property?** Homes, businesses, raw land, antiques, artwork, collectibles, heirlooms, and pets: your children and grandchildren may have different perceptions of their future value, and disagree on their destiny. Being clear about who is going to get what today (and why specific decisions are being made) may help defray potential legal challenges tomorrow.

**Consider leaving some things up to the kids.** You could call in appraisers to set values for your real and personal property, make a list of those assets and their values, and subsequently allow your heirs to take turns choosing the possessions or properties they want to inherit. If a squabble breaks out between heirs over this or that item, you can settle it with a family auction – that item goes to the highest bidder when you pass away.

**Also, consider a revocable trust.** More people should, as wills have basic shortcomings. If they have any imprecise language or lack in *terrorem* clauses (which threaten heirs that challenge them with disinheritance), they can invite lawsuits and other battles. If the author of a will is elderly, a spouse, ex-spouse or children could try to assert that the author had insufficient mental capacity at the time of authorship or wrote the will under undue influence.<sup>2</sup>

Wills are made public; they are probated. While there are many non-probate assets that pass directly to a designated beneficiary or a joint tenant (jointly held bank accounts with right of survivorship, jointly titled real property, POD accounts, most types of IRAs and workplace retirement accounts), other assets do not. The length of the probate process varies by state. It takes weeks in some states, months in others.<sup>3,4</sup>

Probate requires money as well as time: even if you have named the most capable executor around, the court costs and lawyer and appraiser fees involved may still eat up as much as 5% of your estate (if you're a millionaire, that's \$50,000). Mostly, those fees go for basic clerical work.<sup>3,4</sup>

Assets within a revocable trust can avoid probate (assuming they have been properly transferred into the trust, of course). Upon the death of the grantor who established the trust, the grantor's appointed trustee distributes the assets within the trust per the grantor's wishes, no probate involved. The chance of a family fight over inherited assets lessens.<sup>5</sup>

**Living wills? Those can prove quite valuable.** You may not die suddenly, and you could be incapacitated for a period just prior to your death. Should that be the case, a living will (also called an advance directive) can articulate how you want to be treated. Additionally, a health care proxy document can appoint someone (known legally as a health care agent) to authorize doctors and nurses to carry out those directions. A health care proxy is also crucial in instances when a younger individual becomes severely disabled.<sup>5</sup>

**Opt for more control.** When you pass away, your money will have only three possible destinations. Percentages of it will go either to your heirs, to charity, or to the government. If your estate planning goes no further than a will, you could be inviting a dispute and things may not turn out quite the way you want. While creating a revocable trust can cost ten times as much as creating a simple will, it may be worth every penny in the end.<sup>6</sup>

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#### **Citations.**

1 - [blogs.marketwatch.com/encore/2014/09/29/how-to-prevent-family-feuds-when-it-comes-to-your-inheritance/](https://blogs.marketwatch.com/encore/2014/09/29/how-to-prevent-family-feuds-when-it-comes-to-your-inheritance/) [9/29/14]

2 - [nolo.com/dictionary/in-terrorem-clause-term.html](https://nolo.com/dictionary/in-terrorem-clause-term.html) [10/9/14]

3 - [nolo.com/legal-encyclopedia/why-avoid-probate-29861.html](https://nolo.com/legal-encyclopedia/why-avoid-probate-29861.html) [10/9/14]

4 - [nyparenting.com/stories/2013/5/fp\\_askattorney\\_2013\\_05.html](https://nyparenting.com/stories/2013/5/fp_askattorney_2013_05.html) [5/13]

5 - [money.usnews.com/money/personal-finance/articles/2012/07/17/how-to-avoid-fights-over-inheritance](https://money.usnews.com/money/personal-finance/articles/2012/07/17/how-to-avoid-fights-over-inheritance) [7/17/12]

6 - [nhmagazine.com/July-2013-1/Wills-Trusts-and-Estate-Planning/](https://nhmagazine.com/July-2013-1/Wills-Trusts-and-Estate-Planning/) [7/13]