



# LAWYER FOR *Life*

KEEPING YOUR FAMILY HEALTHY, WEALTHY & WISE



## HOW TO BULLETPROOF YOUR ESTATE PLAN

Challenges to wills and trusts are more common than you might think. These disputes can turn very ugly, very quickly. Resentment between family members can last a lifetime, and the financial consequences can be devastating for all parties involved. Here are several ways to prevent potential disputes from arising in the first place, avoid estate litigation, and help ensure your wishes are carried out.

However, if you follow the equality principle, many conflicts can be avoided.

### **Never underestimate the emotional value of certain family heirlooms and other tangible property**

That vase in the foyer or old sofa in the living room might not seem valuable to you, but to certain members of your family it could hold special meaning and value. A statement in a will or trust that essentially says ‘tangible personal property should be divided as my heirs see fit’ can lead to a host of conflicts. By putting specific items that you believe are of interest to certain family members in writing, and discussing these decisions in advance, many emotionally charged disputes can be avoided.

### **If you gave money to one heir in the past, don't forget about it your plan**

Let's say that several years ago you gave one of your sons \$20,000 to help with the down payment on a home. Since your goal is to treat all of your children equally, you might want to address this gift in your will or trust. For example, it can be classified as an advancement, with the \$20,000 counting as part of the money you ultimately leave to that particular son.

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### IN THIS ISSUE:

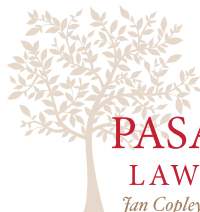
- How to Bulletproof Your Estate Plan ..... Page 1
- What About Blended Families? ..... Page 2
- How to Choose the Right Guardian For Your Children ..... Page 3
- A Personal Note From Jan ..... Page 4

### **Try to treat siblings as equally as possible**

Granted, in some family situations this may seem easier said than done. However, the principle is sound and can help avoid a number of potential problems. If you have two children, leave each of them the same amount. However, the “equality principle” doesn't just apply to money. There is also the issue of control. If one of your children seems better able to manage money and you name him or her as executor of the estate (or trustee of the trust), the other child will likely feel slighted. Naming a corporate executor or trustee can nip this thorny issue in the bud. Another potential problem is when inheritances are left to grandchildren, and one sibling has more grandchildren than the other.



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## HOW TO BULLETPROOF YOUR ESTATE PLAN (CONT.)

### **Consider putting a no contest clause in your will**

If you suspect that one of your children, or his or her spouse, might make trouble over your will, a no contest clause can help avoid potential problems. In essence, this clause makes the risk of challenging your will outweigh the potential benefit of doing so. A no contest clause typically stipulates that if a beneficiary contests the will's validity or its provisions, his or her interest in the will is forfeited. Of course, you have to leave the heir in question enough of an inheritance to motivate him or her not to challenge the will.

### **Prove that you are of sound mind**

This might sound "crazy," but it's not. Challenges to wills often involve allegations that the maker of the will (the testator) was not of sound mind when the will was signed. This tactic is particularly common

when changes have been made to the will shortly before the testator's death. You can help prevent this type of challenge by obtaining an evaluation from a treating physician and a psychiatrist right before you sign or make changes to your will.

### **If you are going to disinherit someone, make sure it is noted clearly in your will**

Our children can and sometimes do disappoint us. Sadly, the level of disappointment may be so severe, the behavior so egregious, that the only solution seems to be disinheriting the son, daughter, or grandchild entirely. If you find yourself in this situation, make sure your decision is noted in your will. You don't want to give a reason for your decision, as this could become the foundation for a potential lawsuit. However, you need to make it clear that your decision was intentional.

## WHAT ABOUT BLENDED FAMILIES?



Planning for blended families presents particular challenges when it comes to ensuring your wishes are carried out. While every situation is unique, here are a few common problems and ways to address them.

Let's say you want to disinherit your ex-spouse. At the very least, make sure you have replaced him or her as the named beneficiary of your retirement plans and

other assets. You should also consider a Long-Term Discretionary Trust (LTD Trust) to administer your children's inheritance, with a party of your choosing serving as trustee. In this way, even if your children reside with your ex-spouse, your trustee will control the inheritance through the LTD Trust and ensure it is used only for your children. Should one of your children predecease your ex-spouse, the inheritance

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## WHAT ABOUT BLENDED FAMILIES? (CONT.)

would remain in your LTD Trust for your grandchildren and, if there are none, for your surviving children or other beneficiaries of your own choosing.

Another useful trust is called a Qualified Terminable Interest Property Trust (QTIP Trust). It can protect your new spouse by providing income and even principal for life. It can also protect your new spouse's inheritance in the event of a subsequent remarriage and divorce. And,

upon the death of your new spouse, the QTIP Trust assets may pass to the LTD Trust you established for your own children.

To learn more about the unique planning problems associated with blended families, and how we can help address your particular concerns and goals, please contact us for a consultation.

## HOW TO CHOOSE THE RIGHT GUARDIAN FOR YOUR CHILDREN

Who should raise your children if, for some reason, you or your spouse is unable to do so? It's not an easy question to answer, but if you have young children, it is a topic you most certainly should address in your estate plan. Otherwise, a court will decide, and its decision might not be the one you would have made. It may not even be in the best interests of your children.

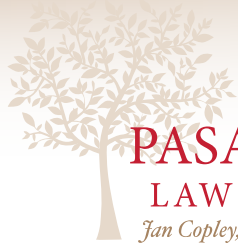


Some of the most important issues to consider when choosing a guardian include:

- Does the prospective guardian have a genuine interest in your children's well-being?
- Does the prospective guardian share your values?
- Can he or she handle the role physically and emotionally? What about financially, if you cannot provide him or her with enough assets to raise your children?

- Does the prospective guardian already have children of his or her own? Will he or she have enough time to adequately care for and look after your children?
- Where does the prospective guardian live? Would that be a good fit for your children? Would having to move far away make an already stressful situation for your children even more so?
- Is it essential that all your children share the same guardian? Most parents say yes, but in some circumstances, such as when your children are of significantly different ages, naming more than one guardian is an option.
- Should you choose one person to act as personal guardian and another to manage the financial arrangements for your children—that is, name a second person to act as custodian or trustee? In certain situations, such as when the best surrogate parent for your children is not necessarily the best person to handle financial matters, this option is worth considering.
- Most important of all, have you spoken to the prospective guardian about taking on such a responsibility, and does he or she seem readily willing to do so?

We have helped many couples select the ideal guardian for their children and designed wills or other planning documents to ensure their wishes are carried out. We welcome the opportunity to do the same for you.



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### A PERSONAL NOTE FROM JAN

Welcome to our most recent estate planning newsletter. I hope you enjoy it! I think this newsletter covers issues that are of concern to everyone.

Our first article is about how to make your estate plan “stick” when you are no longer able to defend it. I think it’s especially important to emphasize that children be treated as equally as possible — people don’t like to be disinherited, even if one child has done very well financially and another one has not. That doesn’t mean that equal treatment is the same as identical treatment. If one child has special issues, there are things that you can do to protect him or her while still providing equal distributions for your other children.

The rules for making your estate plan “bullet proof” are even more important when blended families are involved. Every estate planner (including me) deals with planning for blended families more and more. And, I suspect that even if you are a partner in a long-term relationship, your children might be part of a blended family and you may want to

plan accordingly. If this is something you’re thinking about, please give me a call so we can talk about it.

Finally, we have an article about choosing a guardian. Many parents of young children put off planning because they can’t figure out who the guardian of their children should be. Well, let me say this: there is no perfect guardian. But, on the other hand, it would be disastrous if you don’t name someone, because, if something happens and you haven’t nominated a guardian, a court will. So, just name someone. You can always change it later.

My thanks to all of you for the help and support that give to the Pasadena Law Group!

Jan Copley, Attorney at Law