How to Avoid Estate, Will Blunders

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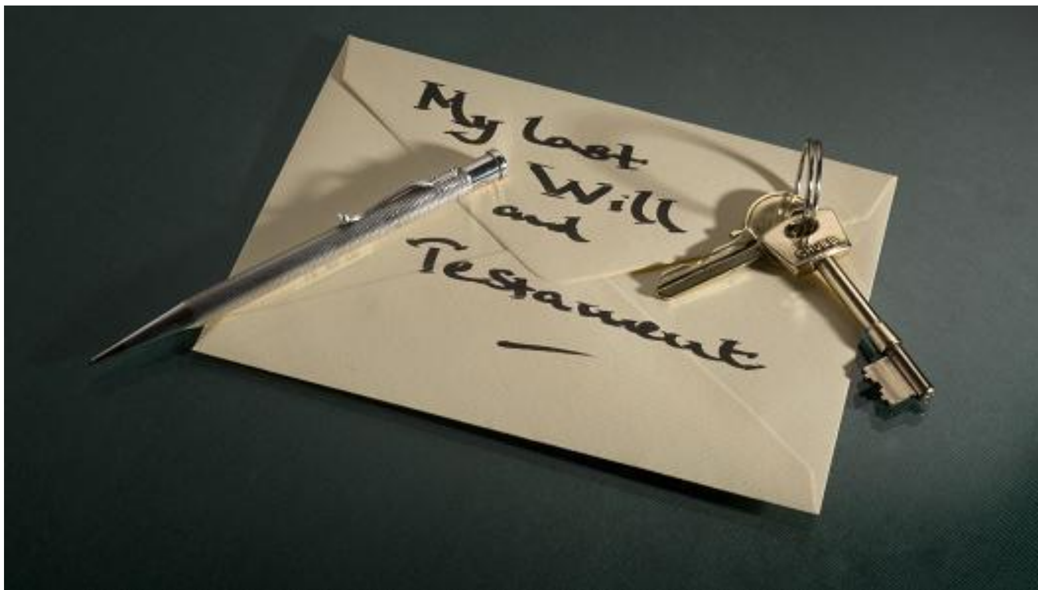
Dan Chilton's elderly mother thought she would minimize future dissent among her nine heirs when she updated her will in the early 2000s. Instead, the family unit has imploded since her passing in 2011.

There were two main culprits. First, the ambiguity of the will language pitted the executors' unassailable discretion against the rest of the heirs. And second, the will contained an "in terrorem" clause that threatened to disinherit any heir who tried to contest the will.



It didn't work. Seven heirs spent thousands of dollars negotiating and then contesting the execution of the will and then gave up, said Chilton, 60, a business analyst from Staten Island, New York.

How could this happen? After all, his mother worked with an estate attorney.

"My mom was a willful lady and probably told the estate attorney to do what she wanted," Chilton said. "But in the end, what the will did not say is what [ultimately] caused the strife and created adversarial relationships. The family is dissolved now."

CNBC turned to several experts for tips on how to avoid these types of mistakes when planning wills and estates.

Utilize a Team Approach

"Some clients are adamant about what they want and don't let the estate attorneys do their job," said Martin Shenkman, an estate attorney. "There's a perception that just getting a document is what you need."

To do the best job for the client, it's important that all those in an advisory role collaborate, he said.

"A lot of estate attorneys don't reach out to financial advisors, because they don't understand the value they can add, especially if there's a potential challenge," Shenkman said.

But family accountants and financial advisors are often the ones who know the most about a family's dynamics.

"We have an ongoing relationship with clients," said certified financial planner Shane Yonston, partner with Blue Summit Wealth Management. "We see them at least every year, whereas the client may only see the estate attorney once."

"We're often the ones who see the red flags; for example, one sibling doing more and is or isn't being compensated, an heir who is financially irresponsible, an heir with a substance-abuse problem, uneven gifting, etc.," he added.

For his part, attorney Shenkman noted that clients may share more with their financial advisors than with their lawyers. "People get nervous when they're with an attorney," he said.

Bring an Advocate

Some advisors serve as intermediaries between their clients and an estate attorney.

"We attend meetings with the attorneys and act as an interpreter for the clients—and as their advocate—to make sure all options are being explored," said Ian Weinberg, certified financial planner and CEO of Family Wealth and Pension Management. "If this is not done, we find that many people will never get comfortable enough to have proper wills and trusts drafted."

Key Will and Estate Questions

Here are several key questions shared by Ian Weinberg, certified financial planner and CEO of Family Wealth and Pension Management:
—What are your personal goals? Professional goals?
—What would you like to achieve with your wealth?
—What keeps you up at night about your money?
—What do you want to do for your children? Parents? Other family members?
—Who have you considered for the role of executor of your estate? Why?
—Who have you considered for the role of trustee for various trusts you may establish? Why?
—Who have you considered for the role(s) of guardians for your children in case of your demise? Why?
—Do your family members get along well? If not, why?***—D.N.***

Find an Ideal Attorney-Client Match

It is critical to match the right estate attorney with the client's personality and level of sophistication, Weinberg said.

"While a CEO may need a multifaceted law firm, a widow who is not financially savvy needs a local firm where she can walk in and spend time with a key member who will take the time and keep it simple," he said.

Put in the time to search for the right attorney, because estate planning is very technical, said Michael H. Smith, certified financial planner and wealth management advisor with Fifth Third Bank.

"Don't hire your neighbor whom you barbecue with, who specializes in common law," he said. "Inquire at your local bank's trust department for names of three competent estate-planning referrals, or visit a reputable website such as the **American College of Trust and Estate Counsel**."

Review Regularly

Due to ever-changing estate laws, it is a good general habit to have one's will or trust reviewed at least every three to five years, even if nothing has changed personally, according to Smith.

"And have your trust reviewed as soon as possible anytime you have a life event such as kids, health issues or a real estate purchase," he added.

Another reason for periodic review is to catch any errors.

"The biggest estate-planning issue we are seeing is poorly drafted documents," said certified financial planner Rick Kahler, president of the Kahler Financial Group. "It's shocking—about 75 percent of what we review has some kind of mistake, such as typos, conflicting clauses, living trusts not funded, deceased trustees, etc.

"We serve as a second set of eyes," he added.

'Per Capita' vs. 'Per Stirpes'

With beneficiary designation, be aware that large companies that hold assets for people, such as mutual funds and individual retirement accounts, typically default to **per capita vs. per stirpes** status, said Michael H. Smith, certified financial planner and wealth management advisor with Fifth Third Bank.

"People take it for granted that beneficiaries read XYZ in the trust, but if it's different in one's IRA, it overrides the trust," he said.

For example, with per capita, if there are two beneficiaries (50/50) and one dies, then 100 percent goes to the surviving beneficiary. But with per stirpes, when one beneficiary dies, the 50 percent share goes to the deceased beneficiary's heirs.***—D.N.***

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