

'Family Fight' Explores Factors That Split Heirs

By Azell Murphy Cavaan
The Boston Herald

Attorney Les Kotzer knew things had hit rock bottom for the two men sitting in his office when one grabbed a large legal book off the desk and hurled it at his brother's head.

"It is tragic to see once-close families being torn apart," recalled Kotzer, a wills and estates lawyer. "Most of the fights I see never go to court but they leave festering wounds that can last for years."

Kotzer says the two brothers who resorted to physical violence that day in his office are part of a growing trend.

Often the legal instructions left behind by a deceased loved one (usually a parent) spark conflict among the survivors (most often siblings and stepchildren).

In their new book, "The Family Fight - Planning to Avoid It," Kotzer and estate lawyer Barry Fish explain how proper planning can head off feuds among the survivors after a family member dies.

The growth in family fights, according to Kotzer, has roots in the "passing away of parents of baby boomers."

"Those parents who are passing away saved every penny they earned and as a result accumulated some wealth," Kotzer said. "Their children, on the other hand, are big spenders."

Kotzer said while Depression-era parents "saved, scrimped and sacrificed" to make ends meet, their consumer-generation children can't get enough of luxury cars, electronic gadgets and designer clothing.

But these material possessions come at a high price.

"You see them on the streets with all their fancy gadgets, but behind closed doors they're in serious debt," Kotzer said. "They're depending on the transfer of wealth they believe is coming down when their parents die."

The problem, he said, is that surviving children often end up feeling they haven't gotten a fair share of their parents' wealth.

In their book, the authors offer tips on preparing a will that won't put siblings at each others' throats.

Compensation for the caregiving child is one sensitive issue the authors tackle early on.

"All too often, individuals are forced to restrict or even give up their education and their careers in order to accommodate aging parents," they write.

"In such situations it is most important not to trivialize the burdens which fall upon those of the children who happen to carry out the caregiving function."

Kotzer said he and Fish have worked with many families where the caregiving children felt "exploited and unappreciated" when they discovered their parents' estate made no distinction between them and the non-caregiving children.

Meanwhile, in families where the caregiver was amply compensated, the other siblings felt the decision was motivated by favoritism.

To avoid such spats, the authors recommend parents give one or more gifts of money or personal items to the caregiver while they are alive. The gifts should be accompanied by a letter indicating that they are gestures of their appreciation.

Parents also can choose to name the caregiving child as the beneficiary on an insurance policy that might otherwise be payable to their own estate.

"Planning ahead can often prevent, or at least minimize, the risk of family fighting," Kotzer said during an interview from his office.

Another potential minefield in estate planning is the naming of an executor and a guardian for your children. Kotzer and Fish believe you shouldn't have the same person fulfill both roles: "By separating your guardian from your executor, you are establishing checks and balances within the administration of your estate," Kotzer said.

And they suggest you appoint an individual - not both members of a married couple - to be your children's guardian.

"If they get separated or divorced, who will have custody of your children?" they write. "To solve this, it might be prudent to appoint (one of the couple) alone."

Other topics include legal dealings with family homes and businesses, excluding a child or a spouse from a will, marriage and remarriage, and joint property.

"The Family Fight" is not available in bookstores; to order a copy from the publisher, call 1-877-439-3999.