

Wills Can Leave A Bitter Legacy

Poor planning, vague bequests may lead to family feuds, lawyers warn.

By Janice Mawhinney
The Toronto Star

Where there's a will, there's a war — that seems to be the case in several high-profile family feuds over the ample assets of deceased celebrities.

Picasso's three natural children battled with his widow and legitimate children for years in court before receiving a share of his estate, which altogether was worth hundreds of millions of dollars.

Frank Sinatra's three children sued his widow, his fourth wife, who was left a multimillionaire at his death, when she was slow ensuring that they received the \$200,000 and personal items left to each of them.

Former Playboy Playmate Anna Nicole Smith recently won an \$88.6 million victory in a complex legal battle with her stepsons over the estate, estimated at more than \$1 billion, of her late husband of 14 months. The Texas oil tycoon had wheeled into the bar where she was a topless dancer. The pair wed in 1994, when she was 26 and he was 89.

But you don't have to be rich and famous to die leaving a will that will leave your family members at each other's throats.

Thornhill lawyer Les Kotzer once sat in his office boardroom watching a man throw a book at the head of his brother. The book didn't injure the brother, but it did knock a painting off the wall.

It occurred to Kotzer that the parent's will that created the falling-out between brothers could have been more carefully prepared. Family members could have been consulted. And perhaps a serious family fight could have been avoided.

Wills that have been prepared without considering all the circumstances "are ticking time bombs," says Kotzer. "The explosions and rifts that result can last for generations."

Of course, he hastens to add, failing to make a will is not going to lead to a desirable situation, either.

If you don't have a will, your same-sex partner or your common-law spouse will inherit nothing.

"The government will write your will for you," observes Kotzer. "Not having a will is a big recipe for a family fight. The law doesn't favour the caregiving child, and gives just as much to the child you haven't seen in 20 years. It doesn't give your best friend anything. This situation is a real mess."

Kotzer, with his law partner Barry Fish, wrote a book full of do's and don'ts and cautionary tales about wills. The book, based on their professional experiences, is called *The Family Fight: Planning To Avoid It*.

One day, five brothers and sisters came calmly into the law office to talk about the estate of a sister who had died.

"There was one take-charge brother with a briefcase, and he said the sister's assets were a house, a car and a few bank accounts," Kotzer recalls.

The sisters asked about the jewelry they had seen. He replied: What jewelry? The sisters said she had

much more than he was reporting and demanded that he open his briefcase. He refused.

"They began to scream at each other and pound on the desks," Kotzer says. "They yelled for half an hour out in our parking lot. We never heard from them again."

Choosing whom to give legal responsibility for power-of-attorney for health and for property, and executorship of a will is critically important, he advises. Ensuring that you have the legal papers to cover these things is, too.

"If the children have no legal power, then when mother becomes incapable, the government of Ontario becomes the guardian of your property," Kotzer says.

It's best to talk over these matters openly with family members, to make sure that people's attitudes are as clear as possible. Don't assume that the oldest child, or the child who is best in math, wants the responsibility. Don't assume that any one person is best for the job to the exclusion of others. It is possible to make joint appointments.

"Appoint someone you trust," Kotzer says.

With the medical power-of-attorney, it helps if you can appoint someone who lives close to you and to carry a card with this information in your wallet.

When choosing an executor, talk to those around you, take great care, and consider whether co-executors might be more appropriate.

Kotzer remembers a case in which the oldest son was the sole executor of a parent's will.

"In front of my partner and me, he asked his siblings to leave the room. They did, reluctantly. That was the beginning of the demise of that family.

"They loved the family cottage and he hated it. They would rather have the cottage than the money. He insisted on selling it. It was sold.

"This kind of thing goes very deep."

In preparing a will, he advises, it's better to try to save a family than to save taxes.

In one family, the mother had a joint bank account containing \$20,000 with one of her two daughters, in order to avoid probate tax. The will left everything equally to the two daughters, but the sister with the joint account claimed that the entire \$20,000 was hers.

'Parents are often the masters of the destruction of their own family'

The other woman felt betrayed, Kotzer says. "For \$20,000, she's not going to go to court, but she'll never speak to her sister again."

Don't write individuals temporarily out of a will to teach them a lesson, Kotzer says. You can't be sure you will ever have the opportunity to write them back in, and the family reverberations could be devastating and long-lasting.

"Parents are often the masters of the destruction of their own family," Kotzer says. "It's heartbreaking."

Homemade wills sometimes work, but have the potential for unexpected problems, he suggests. And

they are easier to challenge in court than lawyer-made wills.

In Ontario, homemade wills are unlikely to have the family law clause that keeps willed property from being shared with estranged in-laws, he says. "It means the money grown from the inheritance is fair game for your separated son-in-law or daughter-in-law."

Talking the contents of a will over with family members, and making it clear where all the assets are, is a good way to prevent problems.

"People tend to be very secretive with their children, and secrecy is not golden in this matter," Kotzer says. "Shock alone can create a fight. Ask: Do you really want your sister cut out of the will? They're the ones who will have to live with the hatred, so consult them first."

One feature of a will that is full of potential for family battles is the disposition of personal items. You don't have to be rich to leave fights among your children. Kotzer says he has seen impassioned fights over china cabinets.

"Often, the fighting is not over money, it is over memories," he says. "Don't assume goodwill. Don't assume that if you stamp an equal sign on your will that you can walk away and leave everything in peace. The kids can still fight."

Be as specific as possible. Leaving "all my antiques" to a particular person invites a battle over what is an antique in terms of the will, and what is not. Or, if you leave your piano to your son in Vancouver, who is going to pay to transport it?

Review the will regularly and make sure things have not changed in value, knocking everything off balance.

"If a parent with a hockey card collection valued at \$5,000 in 1990 leaves that to his son, and \$5,000 to his daughter, and dies in 2001, he hasn't kept in mind that the Wayne Gretzky card alone was worth \$20,000 by then," says Kotzer.

He suggests that you can attach a separate memo to your will, either binding or informal one, setting out specifically which personal items you wish to leave to which individuals.

Second marriages are often problem areas with inheritances. If you want your children to inherit something, you should leave it to them rather than assuming that a spouse will pass it along to them.

When a family home is part of the estate and one of the children lives there, you have to consider how to deal with that in trying to be fair to each child.

"There are no easy answers," Kotzer says. "There are strategies and suggestions, and it may help to look at other people's experiences. "But don't rush to judgment. Think about what you're doing."

Information about the book is available at <http://www.familyfight.com> or at 905-881-1500.