

### Maintaining Family Harmony

By Richard J. Shapiro, J.D.

A significant challenge any parent faces in designing an estate plan is insuring that family harmony can be maintained among the children after the parents' disability or death. If the family dynamics are not fully explored and evaluated during the planning design process, chances are increased that the estate plan will fail to "work" as the parents had intended.

In many families the children will maintain strong relationships with each other, and there will never be any fights or disagreements regarding their parents' estate to cause a rift among the heirs. But then there are the too numerous circumstances where the children (or at least some of them) do not get along with each other, and the chances for a dispute over the parents' estate will be increased significantly.

Sometimes the hostility will be overt, and the parents, with their attorney's assistance, can draft the legal documents taking the family schism into account. But too often the hostility among children is "hidden" during the parents' lifetime; so long as one or both parents are living and lucid, the adult children will usually (but not always) maintain reasonable decorum, but once mom and dad are gone, the knives come out – as do the litigation attorneys.

To help prevent the "family fight," it is important that the parents take as objective a view as possible regarding their children *and* their children's spouses. The estate planning attorney must ask pointed questions to unearth the family's "life stories" to properly counsel the parents in making appropriate dispositions of property, *and* to make the appropriate selection of the various "helpers" – e.g., Executors, Trustees, Health Care Agents and Agents under Powers of Attorney.

Even in the typical case where the parents desire to make equal dispositions among the children, problems can arise. Many times one child (often the oldest) will be selected as the Executor under the will or successor Trustee under a revocable trust. That child may not be well suited for those roles, and may be derelict in fulfilling their fiduciary obligations. The other children may become resentful, even angry, if they do not receive what they believe is adequate information about the estate; if too much time passes, it is possible that the non-fiduciary children will hire their own counsel to review the situation. Often things will go from bad to worse, and before too long a no-holds bar battle may break out. Not only will any hope of family harmony be shattered, but the expense of litigation may quickly deplete a significant portion of the estate.

Finally, careful consideration must be given to the disposition of personal property. After all, there is usually only one wedding ring, one engagement ring, one set of China, etc. While the children may not be overtly concerned about these items during the parents' lifetimes, strong emotional ties to such items may emerge upon a beloved parent's death.

Many family relationships have been shattered because, for example, one child took the grandfather clock that was coveted by another child.

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In my last column I discussed the ongoing trial of Anthony Marshall and attorney Francis Morrissey, who were both accused of criminal actions in connection with the estate of Marshall's mother, New York socialite Brooke Astor. News has just broken that Anthony Marshall has been convicted of 16 of the 18 criminal charges against him, with Morrissey convicted of all five counts against him, including forgery and conspiracy. Marshall faces up to 25 years in prison, with Morrissey facing possible jail time of up to seven years.

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