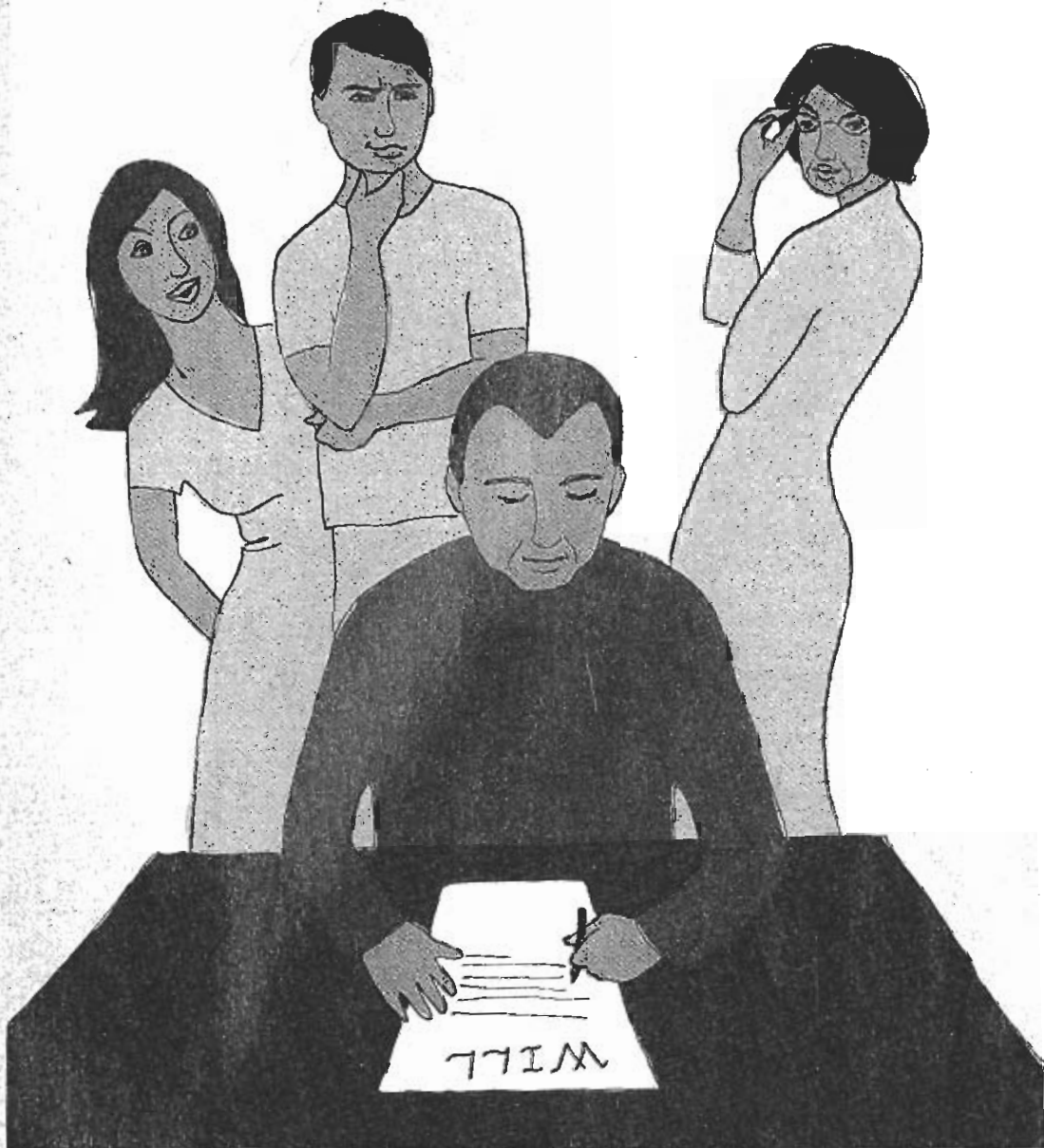


Where There's a Will, There's a Way

Dividing an estate doesn't have to cause a family feud.



By
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Writing a will put retired Pennsylvania couple Gloria and Len Berg (not their real names) in a quandary—they wanted to make sure the youngest of their three sons would be cared for because he suffers from chronic

depression, but they also wished to be fair to all the boys. Had they simply weighted their will disproportionately in favor of their youngest son, there may have been family feuding for generations. Instead, the family opened a dialogue and the two

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older brothers, both successful professionals, promised to pass along their share of the inheritance to a trust to benefit the youngest brother.

While Gloria and Len are content with the arrangements, the youngest son is unaware his inheritance will be in trust and controlled by his older brothers. While the parents' good intentions were to provide, a gap in communication may still leave angry feelings.

"Wills have changed the course of families," says Rebecca Rosenberger Smolen, an attorney with Reed Smith LLP in Philadelphia. "It is not uncommon to see bad blood when things have not been discussed. Open communication usually resolves this problem."

The struggle Gloria and Len faced in trying to fairly divide their estate crystallizes the pain parents face preparing a will. "What is fair?" is perhaps the hardest question parents must answer. What assumptions do they make to arrive at an equitable conclusion? Who should be named executor? Should money be left in trusts? What level of communication should take place between parents and their children to ensure parents leave, most importantly, a legacy of peace and good will?

Planning a will is a personal decision that involves assumptions about what children need—or deserve—and whether need among offspring is comparable. Most parents divide their estate equally among their children. Some assess their children's circumstances and allocate inheritances based on assumptions they make about their children's futures. Many use trusts to protect children from estate taxes, while others rely on trusts to deny their child's spouse access to an inheritance.

"Wills are one of the most divisive subjects post mortem," says Terry Siman, a financial planner and attorney in Spring House, Pa. "Most parents want to be fair but they become paralyzed because it's hard to define fairness. Fair does not necessarily mean equal. Think of fair in terms of what is equitable."

There is not one template for estate planning, but estate planners agree it is critically important for older parents to communicate their intentions to grown

children. Even if parents don't want to reveal dollar amounts, their children should have an idea what to expect. It should not come as a surprise to a child that he's been named executor of the will. He should not learn after the death of his parents that his inheritance is in trust while his siblings have direct access to their portion. Or that his parents have set up education funds for his children, their grandchildren, without consultation.

Smolen advises parents to discuss estate planning with children who are older than 30. Usually, a parent will name at least one child as executor of the will. When that happens, the named child should be informed while the parents are living, and the other children should be kept in the loop. The executor makes sure legal, financial and emotional matters are tended to and that a person's wishes are carried out.

It is to everyone's benefit to name a child or someone you trust as executor and trustee rather than an attorney or financial institution because either could take a fee of up to 5 percent of the total estate. If relations among siblings are especially strained, a third neutral party like a relative may be necessary.

After death, a will goes through probate, or authentication by the court, and this takes time and money. Estate planners recommend setting up revocable living trusts to avoid probate and to make it easier for a spouse and children to inherit a greater proportion of the estate. A living trust is hardly more trouble than writing a will, but many attorneys fail to recommend trusts because they would rather make thousands in probate fees rather than a few hundred to set up a trust.

One of the best ways to help your heirs is to make sure you're taking advantage of tax shelters. While the estate tax is still in effect—or if Congress resurrects it after it goes away in 2010—you may want to take steps to reduce possible estate-tax liability after you die. There are two types of exemptions from federal estate tax. One is the unlimited marital deduction, which allows a person to leave an unlimited amount to his spouse tax-free. The other is each

spouse's \$1 million credit shelter amount that allows a parent to pass on \$1 million to his or her beneficiaries, free of estate tax.

Most people make sure the surviving spouse will be comfortable for the rest of his life. If the estate is worth more than \$1 million, it is better to put the full value of the first-to-die exemption into a bypass trust for the benefit of the surviving spouse. The surviving spouse can spend trust income, and in some circumstances, principal. A bypass trust can shield up to twice the exempt amount from estate tax. When the surviving spouse dies, the remaining money passes tax-free to the next generation.

But if you want to ensure that money will be passed to children and grandchildren, set up separate trusts for your children. A rule of thumb, Smolen says, is that children should be allowed to withdraw one third of the money at age 25, half the balance at 30 and the remainder at 35. "Kids should not inherit money before they are 25," says the attorney. "They are not mature enough. You don't want them to stop pursuing an education or career. If they inherit too early, they will not establish their footing or a sense of discipline."

Another way to avoid estate tax—and to feel the satisfaction of helping your children or grandchildren—is to give away property during your life. Each spouse can make an unlimited number of annual \$11,000 gifts of cash or other property tax-free to children or grandchildren. If you left the same gifts at death and they were subject to estate tax, recipients would see their gifts shrink by at least 37 percent.

"People start estate planning when they start a family because they want to name a guardian for their children," says Smolen. "But serious planning doesn't start until people reach their sixties and seventies. This is their final communication to their family. I suggest clients leave a letter to their children stating their thoughts on life and words of guidance because that's probably even more important than money in the long run." ■

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