

Planning Ahead



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Disinheriting A Child

It is not a decision taken lightly, but there can be good reasons to cut a child out of the Will, or to not treat children equally. It is quite common for parents to be estranged from a child. Or a child may have substance abuse issues a parent may not want to subsidize. Another child might have legal entanglements such that any inheritance received would be claimed by creditors. Or a parent might be concerned their child's marriage is failing and wouldn't want the child's inheritance going to the soon-to-be ex-daughter or son-in-law as part of a divorce. Whatever the reason, the provisions of the Will must be carefully thought through.

First, in order to preserve the relationships between children, there may be ways to benefit one child over another outside the Will. For example, children could be given equal shares under the Will but a favored child could be sole beneficiary of a "pay-on-death" bank account or an insurance policy passing outside the Will, making the unequal treatment less obvious to the disfavored child.

Second, rather than completely disinheriting a child, it may be possible to keep the child in the Will but with provision for the child's share to be retained in trust for the child's benefit with only discretionary distributions. The Trustee of the child's trust could make distributions only if the Trustee determined the child would receive the benefit of the distribution. An ongoing trust for the child rather than outright distribution could protect the child's inheritance from bad judgment, creditors or divorce.

Finally, if the decision is made that one child will receive nothing or only a token gift, consideration should be given to the effect of a "No Contest Clause." If a child will receive nothing, there is nothing for the child to lose in contesting the Will. On the other hand, if a child is left something, it should be a gift large enough to make the child think twice before forfeiting the gift by contesting. How large the gift must be in order to deter a contest depends on the child and his or her circumstances. If a child will be disinherited, the Will should clearly state the intent to disinherit the child.