

**Five ways to ensure your children will fight after you pass away:**

1. Provide for them unequally;
2. Keep the beneficiaries in the dark with respect to your estate arrangements;
3. Keep yourself and executors in the dark as to what you have lent your children;
4. Allow children or friends to provide you care in your old age without proper and clear payment for services; and
5. Where there is a second marriage allow your new spouse, after you pass away, to figure out the ultimate distribution of your respective estates between their kids and yours.

**1. Unequal Treatment**

Children are predisposed to measure not how much they receive from a parent but rather how much they receive in comparison to their siblings. Nothing irks like unequal treatment — justified or unjustified.

In British Columbia, a testator must contend with the Wills Variation Act which allows our courts to interfere with the wishes of a testator and rewrite the will for the benefit of a child or a spouse. Estate planning practitioners can and do attempt to find ways of circumventing the Wills Variation Act, but these plans are rarely beyond challenge. In other words, if you are going to treat your children unequally, know that perhaps a big chunk of your estate is going to pay for the lawyers in the family feud that have helped orchestrate.

**2. Keeping Your Cards Close to Your Chest**

People avoid drafting wills because they do not like to think about dying. It is inevitable that people like to avoid difficult topics of discussion. The corollary to this is that people also tend to tell people what they want to hear. In the case of estates, this can lead to beneficiaries convinced that certain promises were made to *them*, while similar promises were made to others. At trial it will often become clear that a testator has permitted and encouraged certain beliefs amongst potential beneficiaries concerning the disposition of their estate while perhaps being uncommitted to those courses of action. The lesson in these sorts of cases is that being up front and forthright about one's estate plans will require a testator to deal with outstanding issues and expectations during their lifetime rather than requiring the Court to speculate about them afterwards.

**3. Leaving your Executor a Mess to Clean up**

Being an executor or administrator of a contentious estate can be a nightmare. While there is the typical type of estate litigation that arises when a will or estate is challenged, some of the most difficult situations can arise when there is a family business that needs to be sorted out and when a parent has been lending money to a child and not keeping proper records because, after all, it's "between family". In those cases, it is left to the executor to figure out and gather together all of the funds owed to the deceased. Very often the borrower is not predisposed to coming clean about what is owed. Too often what the old bank records show is only a part of the story. Loans may be forgiven

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in full or in part but not documented. There is a difference in law between the ability to collect on a loan over time and what by law can be set off when a beneficiary of an estate has also borrowed from the deceased.

A proper accounting of funds owed and the interest agreed to and accumulated with respect to anyone owing a debt to the testator —and indebted beneficiaries in particular — can go a long way in creating a sense of fairness amongst the remaining beneficiaries. It is clearly the right of a parent to help out a needy or impecunious adult child even if that creates a scenario of unequal treatment. The question then becomes, in making the estate plan, whether that unequal treatment should be recognized in the ultimate disposition of one's estate. Further, see point #1 above on whether unequal treatment will ultimately be maintainable or whether one is opening the door to an estate fight. Finally, however, do not leave it up to your executor to figure out the financial arrangements you had with indebted beneficiaries or business partners, family or otherwise. *Work them out.*

#### **4. Quid Pro Quo**

*Quid pro quo* (from the Latin meaning "this for that") indicates a more-or-less equal exchange or substitution of goods or services. Exchanges can occur where care is provided to a testator in return for benefits from the estate. Too often, however, this arrangement creates trouble for both parties. For the person providing care there is always a fear that the "promise" will not be abided by or that this "understanding" is not mutual or the expectation created is simply a mirage that will evaporate should the testator become displeased with the care arrangement. Often the promise is not in writing and the amount of care and for how many years is undefined and extremely onerous. On the flip side, elders are too often taken advantage of by caregivers. The aged are often subject to manipulation and suggestion and find themselves in vulnerable situations.

The financial temptation particularly of the elderly is to underpay caregivers while leaving an impression that the caregiver will be rewarded in time. This is a dangerous way of conducting one's affairs. When the time comes and care and help is needed, pay for it in full and then some. On this score, neither a lender or borrower be.

#### **5. Trust — but Verify**

In a second (or third, or fourth...) marriage situation where you have a mix of families and one has to sort through the estate arrangements, considerable care has to be paid to ensure that those arrangements survive one's passing. Do not leave it to assurances and understandings between spouses and family members, particularly as tax and probate fee avoiding measures are used in the estate plan. It is often best in those instances to create outside oversight with the involvement of third party executors to ensure that your intentions are respected and "thy will be done".

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