

Legally Speaking

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Legacy of Healing and Reconciliation

Many of you have worked hard all your lives, been frugal, prudent, and steady. You've built up a nest egg that will last the rest of your life, and have provided generously for your family. People such as you are unlikely to adopt the bumper sticker credo of the proud Winnebago owner towing a 26 foot SeaRay "We're spending our children's inheritance." When you pass away you may leave a sizable estate, usually going first to your spouse, and then to your children.

Some of you have children who perhaps have not been so frugal, prudent, and steady. They may have gone through spouses, money, or both, like bathroom tissue. Some of you have been hurt—deeply hurt—by the actions and behavior of your children. It's way too late for spanking, and your wounds cry out for justice. Should they share in the beneficence of your hard-won estate?

Disinheritance of the prodigal child is as old as history. It serves as a kind of retributive justice, especially tempting since from the grave we need suffer none of the emotional or legal repercussions that ensue from cutting off the wayward child. Given that I've handled both sides of this—the drafting and the probate—I have some completely non-legal advice that nevertheless I hope you'll take to heart.

Even though you won't be around to see what happens or even to take satisfaction, however perverse, in the prodigal's come-uppance, one of your family, probably another of your children whom you entrusted to be your personal representative, most certainly will. And that child will bear the full brunt of the disappointment, even fury, of the prodigal. Disinheritance and uneven distributions among children is probably the number one cause of will contests. Even though he or she may not get a dime, the disappointed child may take grim satisfaction in making his siblings squirm, pay attorney fees, and have to show up before a judge to explain their own parent's heartlessness. Barely scabbed over wounds are opened, new ones are created, and the bloodshed is copious.

For what it's worth, most of the time will contests fail. Not always though. Yet whether they fail or not there is permanent, irreconcilable damage to the relationships among the siblings who, if they speak at all, do so only through their attorneys. There are no more family reunions, no 4th of July picnics, no birthday cards from Uncle Bill, only hurt, alienation, and bitterness. The only winners are not the children who remained in their parents' good graces, but the lawyers who carry the dysfunctional family through the tortured, lengthy, and expensive process of will contests.

There are alternatives to complete disinheritance that may allow for reconciliation and healing among the surviving children. Spendthrift trusts can be created for those children who have shown they have difficulty handling money. There are also incentive trusts, where money is held in trust unless and until the beneficiary "earns" it by constructive behavior and achieving certain milestones set forth in the trust.

I don't pretend to know or understand the depth of the hurt and disappointment many people suffer in the course of raising a family. What I do know is that all loving parents want what's best for their children—all of them—and given the choice between reconciliation and enduring family warfare, most of us choose the former. Sometimes, what is just is not always the right thing to do. Have your children come together over your grave, not to blows.