

# LAWYER FOR *Life*

## KEEPING YOUR FAMILY HEALTHY, WEALTHY & WISE



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## HOW TO BULLETPROOF YOUR ESTATE PLAN

Challenges to wills and trusts are more common than you might think. These disputes can turn very ugly, very quickly. Resentment between family members can last a lifetime, and the financial consequences can be devastating for all parties involved. Here are several ways to prevent potential disputes from arising in the first place, avoid estate litigation, and help ensure your wishes are carried out.

### Try to treat siblings as equally as possible

Granted, in some family situations this may seem easier said than done. However, the principle is sound and can help avoid a number of potential problems. If you have two children, leave each of them the same amount. However, the “equality principle” doesn’t just apply to money. There is also the issue of control. If one of your children seems better able to manage money and you name him or her as executor of the estate (or trustee of the trust), the other child will likely feel slighted. Naming a corporate executor or trustee can nip this thorny issue in the bud. Another potential problem is when inheritances are left to grandchildren, and one sibling has more grandchildren than the other. However, if you follow the equality principle, many conflicts can be avoided.

### Never underestimate the emotional value of certain family heirlooms and other tangible property

That vase in the foyer or old sofa in the living room might not seem valuable to you, but to certain members of your family it could hold special meaning and value. A statement in a will or trust that essentially says ‘tangible personal property should be divided as my heirs see fit’ can lead to a host of conflicts. By putting specific items that you believe are of interest to certain family members in writing, and discussing these decisions in advance, many emotionally charged disputes can be avoided.

### If you gave money to one heir in the past, don’t forget about it your plan

Let’s say that several years ago you gave one of your sons \$20,000 to help with the down payment on a home. Since your goal is to treat all of your children equally, you might want to address this gift in your will or trust. For example, it can be classified as an advancement, with the \$20,000 counting as part of the money you ultimately leave to that particular son.

### Consider putting a no contest clause in your will

If you suspect that one of your children, or his or her spouse, might make trouble over your will, a no contest clause can help avoid potential problems. In essence, this clause makes the risk of challenging your will outweigh the potential benefit of doing so. A no contest clause typically stipulates that if a beneficiary contests the will’s validity or its provisions, his or interest in the will is forfeited. Of course, you have to leave the heir in question enough of an inheritance to motivate him or her not to challenge the will.

### Prove that you are of sound mind

This might sound “crazy,” but it’s not. Challenges to wills often involve allegations that the maker of the will (the testator) was not of sound mind when the will was signed. This tactic is particularly common when changes have been made to the will shortly before the testator’s death. You can help prevent this type of challenge by obtaining an evaluation from a treating physician and a psychiatrist right before you sign or make changes to your will.

### If you are going to disinherit someone, make sure it is noted clearly in your will

Our children can and sometimes do disappoint us. Sadly, the level of disappointment may be so severe, the behavior so egregious, that the only solution seems to be disinheriting the son, daughter, or grandchild entirely. If you find yourself in this situation, make sure your decision is noted in your will. You don’t want to give a reason for your decision, as this could become the foundation for a potential lawsuit. However, you need to make it clear that your decision was intentional.

## WHAT ABOUT BLENDED FAMILIES?



Planning for blended families presents particular challenges when it comes to ensuring your wishes are carried out. While every situation is unique, here are a few common problems and ways to address them.

Let’s say you want to disinherit your ex-spouse. At the very least, make sure you have replaced him or her as the named beneficiary of your retirement plans and other assets. You should also consider a Long-Term Discretionary Trust (LTD Trust) to administer your children’s inheritance, with a party of your choosing serving as trustee. In this way, even if your children reside with your ex-spouse, your trustee will control the inheritance through the LTD Trust and ensure it is used only for your children. Should one of your children predecease your ex-spouse, the inheritance would remain in your LTD Trust for your grandchildren and, if there are none, for your surviving children or other beneficiaries of your own choosing.

Another useful trust is called a Qualified Terminable Interest Property Trust (QTIP Trust). It can protect your new spouse by providing income and even principal for life. It can also protect your new spouse’s inheritance in the event of a subsequent remarriage and divorce. And, upon the death of your new spouse, the QTIP Trust assets may pass to the LTD Trust you established for your own children.

To learn more about the unique planning problems associated with blended families, and how we can help address your particular concerns and goals, please contact us for a consultation.

## HOW TO CHOOSE THE RIGHT GUARDIAN FOR YOUR CHILDREN



Who should raise your children if, for some reason, you or your spouse is unable to do so? It’s not an easy question to answer, but if you have young children, it is a topic you most certainly should address in your estate plan. Otherwise, a court will decide, and its decision might not be the one you would have made. It may not even be in the best interests of your children.

Some of the most important issues to consider when choosing a guardian include:

- Does the prospective guardian have a genuine interest in your children’s well-being?
- Does the prospective guardian share your values?
- Can he or she handle the role physically and emotionally? What about financially, if you cannot provide him or her with enough assets to raise your children?
- Does the prospective guardian already have children of his or her own? Will he or she have enough time to adequately care for and look after your children?
- Where does the prospective guardian live? Would that be a good fit for your children? Would having to move far away make an already stressful situation for your children even more so?
- Is it essential that all your children share the same guardian? Most parents say yes, but in some circumstances, such as when your children are of significantly different ages, naming more than one guardian is an option.
- Should you choose one person to act as personal guardian and another to manage the financial arrangements for your children—that is, name a second person to act as custodian or trustee? In certain situations, such as when the best surrogate parent for your children is not necessarily the best person to handle financial matters, this option is worth considering.
- Most important of all, have you spoken to the prospective guardian about taking on such a responsibility, and does he or she seem readily willing to do so?



We have helped many couples select the ideal guardian for their children and designed wills or other planning documents to ensure their wishes are carried out. We welcome the opportunity to do the same for you.

## A PERSONAL NOTE FROM ROBERT

One of the partners in a firm where I practiced for many years had a little black book of referral sources. When a client, friend, colleague or employee needed to find someone to help them with an issue, the partner would pull out his little black book and make a referral to the proper professional or tradesperson to address the need at hand. I was always amazed at this resource for solid referrals that really worked.

Over the years I have built up my own database of professionals and trades people who have proved themselves to my family, my friends and colleagues. The database of reliable referrals runs the gamut from matrimonial attorneys to a golf pro who can truly improve your game, from bankruptcy counsel to a dedicated and knowledgeable furniture salesperson and so many, many more. If you ever find that you need a professional or trade referral, please feel free to give me a call. I would be pleased to use my vetted referral database on your behalf.

Referrals are also a great way for me to build my law practice and are always greatly appreciated. I welcome referrals of your friends, family and neighbors and coworkers in need of an attorney to assist them with estate planning, probate, estate litigation, guardianships, Medicaid planning, long-term care funding planning and asset protection. It would be my honor to serve them.

*Robert Boydston*

