

Planning For Your Own Aging: How Can an Elder Law Attorney Help?

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I don't want my family members fighting over my stuff or contesting my Will after my death.

Families often know if there are one or more family members who are likely to make a fuss after someone dies. Here are some possible way to reduce or prevent conflict:

- **Execute your Will carefully.** Will contests are rare and extremely difficult to win if a Will was properly executed, is not ambiguous, if the Testator had legal capacity, and was not under any undue influence at the time of making the Will. If your estate plan includes an heir who is being disinherited, or an unequal disposition, it is best if the Will is prepared by an attorney and executed in the attorney's presence, the attorney and witnesses are neutral disinterested parties, and the witnesses are prepared to testify about the Testator's capacity and lack of undue influence.
- **Choose the right Personal Representative.** Don't worry about birth order or whose feelings might be hurt. Choose the person with the best skills and personality for the job. As a fiduciary, the PR needs to be able to follow instructions, deal with paperwork, avoid self-dealing, act fairly and responsibly, and exercise the utmost loyalty and good faith to protect and administer the estate. It is also important to plan for the unexpected and name alternates.
- **Consider a non-family member as your Personal Representative or Trustee.** Many families know in advance that conflict is likely. A neutral family friend or professional fiduciary might be the best choice to administer the estate fairly and expeditiously.

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- **Give clear instructions about personal property.** A lot of family fights revolve around treasured heirlooms or mementos. Give clear instructions about what you would like to do with your possessions after your death. If you think your family members will not be able to agree, you may wish to leave instructions regarding a fair process for dividing up personal property. Attach a Tangible Personal Property List to your Will.

If I become incapacitated, I don't want my family members fighting over how and where I should receive care.

This is a common area of family conflict. Family members may have different ideas about what is best for the elder. In almost every case where there is dispute over the care plan, the underlying issue is balancing safety versus autonomy. Here are some possible solutions:

- **Choose the right fiduciary.** Choose a person to be your Attorney-in-Fact or Trustee that you trust to carry out your wishes to the greatest extent possible.
- **Communicate your wishes.** For example, if your preference would be to have care at home, even if that is more expensive than another care setting, make sure that your Attorney-in-Fact or Trustee knows what you want, and if necessary, can stand up to pressure from beneficiaries who may be worried about their inheritance.
- **Be realistic in your planning.** Don't expect your Attorney-in-Fact or Trustee to blindly carry out your stated wishes if they are unsafe or unwise. Consider the possibility that your incapacity may make it impossible for you to understand your own care needs. If your goal is to age in place, you may not be able to accomplish that in a four-story townhome, or you may not have the resources to afford in-home care. Educate yourself about the options and make a plan that is reasonable and realistic.
- **Be realistic about supporting a dependent family member.** One of the most significant barriers to implementing a care plan may be the unrealistic support of

a dependent family member. Continuing to give a family member financial support or a place to live may have grave consequences when you need your resources for your own care. There may be mental health or substance abuse issues that are contributing to the adult child's inability to move out. There may be a co-dependent relationship, with the parent feeling guilty or intimidated if they were to try and stop support. Do not wait to address this issue until a crisis happens. There may be ways to prepare for a transition, but such plans can take time to put in place.

- **Have a plan for retirement from driving.** Driving is an issue that causes a great deal of conflict and turmoil in families. It is a subject that we don't want to confront. Many of us firmly believe we will be able to drive safely up to end-of life. The reality is that for most people live 7 to 8 years beyond the point where they can safely drive. Think about your plan and communicate your wishes. Consider making a contract with your family that you will agree to give up driving when your doctor advises you, or when a trusted family member determines that it is the right time to relinquish the keys.

How can I protect myself from financial exploitation or guardianship?

Financial exploitation is unfortunately all too common. Sometimes the exploitation is motivated by greed, but in some cases, a child who is also a caregiver or attorney-in-fact may feel entitled to money from the elder. How do you plan to protect yourself from exploitation? Here are some possible options:

- **Maintain a relationship with an attorney that you trust.** Exploitation sometimes happens when an elder is taken to a new attorney who has no prior relationship or knowledge of the elder's long-standing goals and values. You can let your family know, prior to any diminished capacity, that you have worked with an elder law attorney to put your estate plan in order, and if any changes need to be made, you want to return to the attorney that you trust.
- **Set up guidelines for information sharing.** In most cases, transparency and information sharing helps. A person who is financially exploiting an elder

generally wants to hide that information. If you want full transparency of health and financial information, make your wishes known. There are exceptions if a family member has mental health or personality issues that would make full information sharing risky. A plan for information sharing is a good topic to discuss with your elder law attorney or Aging Life Care Professional. Sometimes a trusted financial advisor is the right person to watch for signs of exploitation. The right team of family members or professionals can provide oversight.

- **Choose the right fiduciary and have a good team.** Don't set yourself up for exploitation by naming a family member with money or substance abuse problems or a lack of ethics. Sometimes family conflict can only be set aside with the appointment of a neutral professional. Don't be isolated. Have a good team of support so that possible exploitation will be noticed and dealt with.

Planning takes some time and energy but is essential to prepare for you own aging.

*“A goal without a plan is just a wish.”
Antoine de Saint-Exupéry*