

Avoid “bad blood” among family members: Protect your will from legal challenges

Published on July 30, 2020

You’ve probably seen it in the movies or on TV: A close-knit family gathers to find out what’s contained in the will of a wealthy patriarch or matriarch. When the terms are revealed, a niece, for example, benefits at the expense her uncle, causing a ruckus. This “bad blood” continues to boil between estranged family members, who won’t even speak to one another.

Unfortunately, a comparable scenario can play out in real life if you don’t make proper provisions. With some planning, you can avoid family disputes or at least minimize the chances of your will being contested by your loved ones.

Start at the beginning

Before you (and your spouse, if married) set the table for your will, which is the centerpiece of any comprehensive estate plan, discuss estate matters with close family members who’ll likely be affected. This may include children, siblings, adult grandchildren and possibly others. Present an outline regarding the disposition of your assets and other important aspects.

This doesn’t mean you should be specific about everything in the will, but it’s a good idea to provide a basic overview of your estate. Consider the input of other family members; don’t just pay lip service to their feedback. In fact, they may raise issues that you hadn’t taken into account.

This meeting — which may require several sessions — may head off potential problems and better prepare your heirs. It certainly avoids the kind of “shockers” often depicted on screen.

Means of protection

Although there are no absolute guarantees, consider the following methods for bulletproofing your will from a legal challenge:

Draft a no-contest clause. Also called an “in terrorem clause,” this language provides that, if any person in your will challenges it, he or she is excluded from your estate. It’s often used to thwart contests to a will.

This puts the onus squarely on the beneficiary. If he or she asserts that the estate isn’t divided equitably, the beneficiary risks receiving nothing. Be aware that, in some states, this clause may not be enforceable or may be subject to certain exceptions.

Choose witnesses wisely. You may want to use witnesses who know you well, such as close friends or business associates. They can convincingly state that you were of sound mind when you made out the will. You also may want to choose witnesses who are in good health, preferably younger than you and easily traceable.

Obtain a physician's note. A note from a physician about your health status is recommended. For instance, it can state that you have the requisite mental capacity to make estate planning decisions and thus will be useful in avoiding legal challenges.

Last but not least

After your will is drafted, don't make the mistake of putting it in a safe where you may forget about it. Review it periodically with your attorney. By fine-tuning the will, you improve the likelihood that it'll deter a legal challenge and, if necessary, prevail in court. Please contact us with any questions regarding your will.

© 2020

The Law Office of Eugene Gorrin, LLC
17 Watchung Avenue, Suite 204
Chatham, NJ 07928
973.701.9300
egorrin@gorrinlaw.com
www.gorrinlaw.com