

Disinheriting A Child May Leave Scars

By Wesley E. Wright and Molly Dear Abshire, as published in the Houston Chronicle Senior Living Section on April 22, 2009.

People who are planning for the disposition of their estates by preparing a last will and testament or trust, commonly leave their assets equally to their children. If one or more of the children predecease the testator (the one who made the will), then most people leave that deceased child's share to his or her children. Although this is by far the most common manner of disposing of assets, there are other alternatives some people choose instead.

One plan that occasionally is chosen involves disinheriting a child.

There are varied reasons people give when seeking to disinherit a child. Some of the reasons include: "My son is successful, much more so than my other children. For that reason, I would like to leave all my estate to my other two children." This is perfectly legal, as a testator has the right to leave his or her assets to anyone he or she chooses. But is it the correct way to handle the situation?

An attempt to explain in the will why there was a disinheritance sometimes may be viewed as very cold by the disinherited child - an impression that could never be undone once the testator passes away. "With regard to the emotional harm, parents should know that even if a child is financially stable, there is a symbolic meaning to receiving something from a parent's estate," said Hyman Darling, an elder law attorney who practices in Massachusetts. If you choose to disinherit a child, you should consider explaining it to the child so that he or she understands you mean no ill will to them, and that you are merely trying to help."

Another view is to consider leaving your estate equally to all of your children. Unless you are intimately familiar with the net worth of the child, you may be mistaken about how well the child is or isn't doing. What happens if the child sinks financially 10 years later, and you die with a will that was written when you assumed the child was going to be financially secure the rest of the child's life?

Consider the scar that could be left on the child who may be financially better off than the others but will be emotionally hurt by unequal giving to the children. This may emphasize the feeling the child has had for years that the other children are being treated better because they are favored over the one who is "better off."

Other claims due to unequal distributions to children that may arise in a potential probate contest may be undue influence, duress or unsound mind. This is why it is important to consider memorializing your wish to disinherit the child by actually writing the reason in the will. This should be carefully discussed with your estate planning attorney because what you say in the way of reasons to disinherit may be interpreted in such a way to give rise to a claim should the child decide to attack the will after your death.