

Your grandfather's dead. It's my money now!

Five estate-planning mistakes to avoid.

By Melissa Leong October 29, 2014
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The good thing about making mistakes when it comes to estate planning is that you won't be around to suffer the consequences. The downside is that your loved ones could be subjected to further pain.

To prevent you and your family members from enduring more stress, misery or confusion than necessary, here are five estate-planning boobos to avoid, according to Les Kotzer, wills lawyer and co-author of *The Wills Lawyers: Their stories of money, inheritance, greed, family and betrayal*.

1. Leaving everything to someone with private instructions to donate to charity.

Even though your daughter Pinky swore that she'll donate a portion of the inheritance, there are no guarantees that she'll follow through when you're gone.

Mr. Kotzer remembers a case where a mother on her deathbed made her two daughters promise to donate money to the food bank that helped them. "After Mom died, the daughter who was the executor said, 'I'm writing a cheque from the estate to the food bank.' The other daughter said, 'If you do that, I'm going to sue you because it's not in the will.' In the end, the daughter who was the executor gave her own money to the food bank in mom's honour."

If there's a charity that you want to give to, put it in the will. "You do the planning. Don't leave it for others to do it for you."

2. Set your will up based on today's situation and forget it.

Plan ahead and revisit your will every so often. Don't write in your will that you're leaving your current house on John Street to your niece because if you move before you die and don't update your will, your niece might end up with nothing.

Mr. Kotzer says that one man who made a fortune during the dot-com boom created a will leaving his \$2-million estate to his two children; he also promised \$10,000 to 20 others. However, the bubble burst and he didn't update his will; his estate was only worth \$250,000 when he died, leaving money to 20 people and only \$25,000 to each of his kids, including his daughter who suffered from multiple sclerosis and who he had hoped to financially take care of for the rest of her life.

He also cautions against leaving one child more money than another because you believe that one is in better financial shape. If you've never spoken to them about their finances, you may not know the real situation, such as if they're heavily in debt, he says.

3. Give up control of your finances to your children.

"Once you give up control, you may not get it back," he says. "Yes, they may be your children but they may not be good children."

Mr. Kotzer recalls a story of an elderly woman whose children had convinced her to transfer all of her assets to them so there would be no probate tax upon her death. They agreed to provide her with an allowance; but they yelled at her if she exceeded her monthly allotment. "This woman is now terrified of asking her own children for her own money."

4. Expect your children to give some of their inheritance to your grandchildren.

“If you leave [your assets] to your children, that money may well be spent before it gets to the grandchildren,” he says. “You may want to leave it to your grandchildren as a separate entity or give them money while you’re alive.”

One grandfather told his granddaughter that he was leaving his estate to her mother and that one day, she would receive it when her mother passed away, Mr. Kotzer says. But when the mom died, her husband inherited it all and remarried. “When the legitimate granddaughter said, ‘Can I get some of grandfather’s money to start a business?’ He said, ‘Your grandfather’s dead. It’s my money now.’”

5. Trust a homemade will.

If you’ve made your own will, it could be fraught with problems. If you’ve downloaded the will from the internet, is it from your province? Have you signed and had it witnessed on the same day? Does it have contingencies? For example, if you leave all of your money to your sister, what if your sister dies before you?

One woman brought in a homemade will to Mr. Kotzer that was about 30 pages. After reviewing it, he said, “It appears to me you have only one son.” “What are you talking about? I have three children,” she responded. “Did you type this will?” She shook her head; one of her sons had created it, making him the sole heir.