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Retirement and Estate Planning

Family plan

An estate executor can unite or turn relatives into enemies

By **AMBROSE CLANCY**

Drafting a will can be a somber and also joyous occasion, facing up to the inevitable but bestowing what you've earned and what you value to the ones you love. But many people are unaware of another crucial result of their actions: Naming the wrong executor of their estate can cause heartache and hell for their beneficiaries and tear families apart.

An executor, appointed in the will by the deceased, pilots an estate on its journey through the legal system. Often the executor is a family member or members, and this is where trouble comes to town, said Jennifer Cona, managing partner at Melville-based Genser Dubow Genser and Cona, an elder law and estate planning law firm.

"Often a parent will think they're treating children equally by giving one child more money but giving the other child the job of being an executor, believing that shows how much they trust that child," Cona said. "Huge mistake. Ultimately it's bad for both heirs and often the will is contested, tied up in court and is costly, time consuming and no one wins."

Innocent decisions can produce terrible consequences, Cona said. Family members fighting over a gravesite is frequently the product of a disconnect between good intentions and cold reality. Cona hypothesized a situation where one child is doing better financially than a



MARY O'REILLY: Naming an executor is not just about family unity.

sibling and the parent decides to leave significantly more money to the child struggling financially. "It makes sense on a financial level and absolutely no sense on an emotional level," she said. "Children perceive it as, 'Mom loved you more.'"

An attorney or an accountant is a wise choice as executor with a large and complicated estate, Cona said, but added if everything is left equally it's perfectly fine to have a family member as executor.

Mary O'Reilly, a specialist in tax and estate planning with the Mineola law firm Meltzer Lippe, said choosing an in-family executor or an outsider should be looked at on a case-by-case basis. "It all depends on the family dynamic," O'Reilly said. It's typical to have a beneficiary as an executor, but in contentious situations, or when the

estate is complicated, or when the beneficiary lacks financial sophistication, it's best to look for an outsider, she added.

"An executor needs the wherewithal to hire an attorney and an accountant, get paperwork filed, sign documents and be responsible," O'Reilly said. "You might have beneficiaries who just don't meet that."

Choosing the outsider to be executor usually means less money for the heirs, O'Reilly said, since a beneficiary/executor usually doesn't take a fee while an outsider always will.

As for multiple executors, it can work with two sides of a family being equally represented, acting as a check for each interest. But the danger with this is a deadlocked estate and drawn out court battles to decide its fate," O'Reilly said.

Whether choosing a family member or a hired hand, it's important to see a professional estate planning attorney before pulling the trigger, O'Reilly said. "A professional will ask about relationships, how your kids get along, what do they do, is their sibling rivalry," she said. "If everyone's getting along, and there's no resentment then everyone's on equal footing" and a family member is probably the correct choice for an executor.

But it's not just a matter of family unity. One idea is to name two executors, knowing one is capable and can help the other. "If a spouse is not up to the duties of being an executor, but you don't want to name your son over your spouse because she'll be upset, name them together, knowing your son will help her," O'Reilly said.

Cona advised two tracks to take. "Get your assets organized but get your thoughts organized, too," she said. "If you're talking about siblings and you're talking about money, there's always room for problems."