

by John Ambrecht, Esquire

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## Taming The Survival Instinct

Survival – it's one of man's strongest, most basic instincts. Yet time and again, I see families drive themselves to the brink of financial disaster following the death of a parent, because the parents didn't realize this truth at the time of their estate planning.

It's become a rather predictable phenomenon in my practice to hear clients say, "Not my family. My family would never do that. My kids would never treat each other that way. My brother would never do that to our family business. My second spouse would never treat my children like that after I'm gone," and so forth. As family members, we forget that an inheritance – be it a house, business, money, or anything valuable – tends to change how heirs view and treat each other more frequently than you might imagine.

The problem is preventable. But not if one takes a naïve stance towards human nature, family roles, and perceived or real power within a family unit.

It's understandable that we want to believe the best about our loved ones. It's not that our families don't love each other or are not inherently well meaning. Rather, it's that we don't realize the natural human survival instinct, influenced by complications of self-esteem, may manifest in many negative psychological ways, such as narcissism, greed, sibling rivalry, anger, rigid defensive behaviors, attempts for power, self-interest, and more. Through human evolution and other environmental influences, these characteristics have become so strong and ingrained in human nature that, more often than not, they supersede our most civilized rational intentions.

We can ruin our families for generations ... yes *ruin* them ... when we ignore or dismiss this fact. The good news is that now there are ways in the estate planning process to minimize the pitfalls of human instinct.

### A Holistic Approach

Today, the wisest and most successful long-term estate-planning approaches for most families are holistic. This means they engage the whole family and embrace H.B. Karp's philosophy in his book, *The Change Leader*. Karp states that, "No human being has the right to make a unilateral decision that affects the lives of other individuals without offering them a

voice in that decision."

I can see many of you and your professional advisors responding with, "Ugh. I have to involve everyone in the family? That's extra work. I could lose control of the situation. How much more would that cost me up front?" These are reasonable reactions and questions. The answers are, "Yes, involve everyone in the family who matters to you. And yes, it's a little more work up front, but the long-term benefits far outweigh the costs in time, effort, emotional trauma, and dollars. And no, you won't lose control of the situation. I guarantee it."

Here's how the holistic approach to estate planning works (you can read more about this method of planning at [www.familiesandwealth.com](http://www.familiesandwealth.com)):

The senior generation keeps the control but asks the succeeding generation(s), *in a structured and controlled environment*, for their input on all of the issues that could impact them after the parents are gone.

Before the process begins, a document is signed by everyone involved giving the lawyer permission to guide the process and interact with each generation. The document specifies who the lawyer actually represents (usually the senior generation) so that the lawyer's legal and fiduciary responsibility to the client is clear. In our office, if an expert is needed to help everyone calmly reach an understanding about the goal, we call in a family communication facilitator.

After the formalities are handled, the lawyer (and family communication expert, if needed) begins focusing, facilitating and managing the family's communications toward an estate plan that works for everyone. Ultimately, the succeeding generation presents their ideas to the senior generation and if those ideas are fair, just, and equitable, then those ideas may be adopted by the senior generation and drafted into the testamentary or other controlling legal documents.

If the attorney is experienced at this holistic approach, he or she will know how to guide the process toward a harmonious and effective conclusion.

### Bring Everyone Together

Perhaps the most important tip I can pass along from my many years of estate planning is to tell you not to ignore history. Estate planning pro-

cesses are changing to this more precautionary, preventive approach for a reason. The toll on your family, both emotionally and financially, is far less the *more* you use a long-sighted, whole-family approach to estate planning. Like a good insurance plan, it's not wise to leave these situations to chance. Too many things can go wrong.

If you still find yourself hesitating, consider how much the average family fight can cost in legal fees. If a typical, litigated divorce these days averages between \$15,000 to \$30,000, with hourly lawyer's rates running from \$150 to \$1,150, you can imagine how much more costly it could become with multiple litigants and lawyers and a case that drags out for years! I've seen cases where a single person will hire up to four and even as many as 25 lawyers to advise and fight their case for them if they think they're entitled, or "right," or feel they've been wronged. It's not a matter of what's true. It's a matter of what they perceive, feel, and want. While other kinds of cases can be grounded in fact, with estate plans you just have people getting upset and suing because their feelings got hurt!

If we follow this line of thinking into the worlds of finance, sports and entertainment, even a \$30,000 court case is cheap. The divorces of Michael

Jordan, Neil Diamond, Harrison Ford and Steven Spielberg each cost more than \$100 million, according to Reuters. And again, that's just a contested divorce between two people! Remember, it is not just the wills of the famous, like singers Michael Jackson, Frank Sinatra, and John Lennon or oil magnates like J. Howard Marshall II (Anna Nicole Smith) that get disputed.

The key is to remember that no parent will ever be able to predict with 100% certainty who will feel what if they try to put together a simple, quick plan without consulting the rest of their family during the decision-making process. By bringing everyone together in a neutral, emotionally safe, respectful, structured & controlled setting, you at least have an opportunity to guide the next generation through the issues that might arise for them and mitigate the outcome. It's too late after the family leader is gone. When the emotional, psychological, physical and financial "safety" net you (or they) provide is no longer there, the urge to survive is so strong it does outweigh human rationality.

"Not my family?" I don't know. Do you really want to leave it all up to chance when there's a less fallible way of avoiding hurt feelings and family litigation?

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