



🔗 How to craft a will that's fair to loved ones

By PAMELA YIP

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Creating a will that is fair to beneficiaries doesn't always mean dividing your estate in equal shares. You want to be fa

"I tell my clients that 'fair' doesn't always mean 'equal,'" said Wade Chessman, president of Chessman Wealth Strategy. "I want to leave my children equally but treat them uniquely."

Parents often struggle when deciding whether to leave one child more than another, or how much to leave members of the family. Wade Chessman is a financial planning lawyer at Underwood Perkins PC in Dallas.

"For some reason, we have a cultural notion that equal is the same as fair," he said. "This is the notion so much so that unequal and unnatural distributions raised the chance of a will contest by magnitudes."

Experts advise that you consider the needs of each beneficiary.

"Sometimes one child is well-off and doesn't need the inheritance. Sometimes only one child has not yet been through college."

A child may also have special needs, leading you to leave more to that person.

"In many situations, treating each child according to his or her needs is more fair and more closely duplicates what a parent would do."

You're not required to distribute your assets "quantitatively equal" among your children, said Norm Lofgren, estate planning lawyer at Underwood Perkins PC in Dallas.

"Assume for a moment that Mom and Dad have two children," he said. "Both have college degrees. One is a financial planner earning a hundred thousand dollars each year, and the other is by choice a minister earning less than \$50,000 each year."

"If Mom and Dad decided to just divide their modest estate equally between their two children, have they done the fair thing?"

The issue of fairness in a will also surfaces with blended families in which there are children from previous marriages.



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"If Mom and Dad decided to just divide their modest estate equally between their two children, have they done the fair thing?"

The issue of fairness in a will also surfaces with blended families in which there are children from previous marriages.

“Often a spouse wants to make sure her current husband is provided for, but upon his death, wants to benefit her children and the family,” Wald said. “There are specific trust techniques that lawyers use on a regular basis to accomplish this. The will should make the will something that a person should not attempt to do without legal assistance.”

Consider stepchildren

For Cindy Bittner, being fair means including her stepdaughter and her two step-grandchildren in her will, along with her biological children.

“They are family to me — very much so,” said Bittner, a Dallas resident who’s been widowed since 1994. “They’re very much a part of theirs.”

Bittner, 59, also has biological children, a daughter and two sons.

Her stepdaughter, who lives in Tacoma, Wash., was in the original will that Bittner and her husband drew up before his death.

“Since my husband’s death, they have become part of my family, more so than prior,” Bittner said. “I knew legally I was their family, so I wanted to continue with that.”

Experts advise appointing a trustee that you can rely on to make the right decisions, within your guidelines.

“One way to handle this is to appoint a trustee to oversee a pot of money for the children and to give the trustee broad powers, but as much specific instructions as to how you would handle the money yourself. This is sometimes criticized as controlling the children.”

Naming one child as a trustee might cause friction. Instead, many experts say to name someone who is not a beneficiary.

“If the child needs a trust, consider naming a corporate trustee and giving the child the power, the ability, to select a trustee.”

Before you’re 6 feet under

Most important, communicate your wishes well — to your family and to your lawyer.

“If parents determine that they wish to divide their estate among their children in other than a numerically equal way, it’s important to discuss this with the attorney preparing the will or trust,” Lofgren said. “Anytime Mom and Dad treat the children differently, you run the risk of family conflict.”

And don’t catch your beneficiaries off guard.

“Whatever approach is used, when there is an unequal distribution, the beneficiaries should be told in advance that you’re doing it.”

To guard against one beneficiary contesting the will, include contingencies. For example, a bequest to a child may be contingent on the child surviving the testator.

“Consider having a family meeting with adult children to discuss the estate plan while Mom and Dad are still alive,” Lofgren said. “Discussing the plan right after the funeral, when they are dealing with grief and when emotions are frayed, is not a good time.”

Whatever you decide, the solutions require thoughtful analysis. Anything less than that and you risk leaving your family with a will that doesn’t reflect your wishes.

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