

How Can I Deal With an Unfair Will?

A will is a compromise — not a report card. How to deal with divvying up the goods.

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QUESTION: How Can I Deal With an Unfair Will?

It had been just a few days since her mother's funeral, and Susan Garrett was consumed with anger and resentment.

She had spent six years caring for her ailing and cantankerous mother before the elderly woman passed away. Because she lived nearby and had no children, Garrett took on much of the burden—her older brother and younger sister lived farther away and had their own families to manage. Initially, it was just a matter of buying groceries and running errands, but toward the end, Garrett was there all the time, feeding and bathing her. It wasn't easy: Her mother complained about everything from how dinner was cooked to where Garrett had parked her car.

After her mother's death, Garrett learned the estate would be split equally among the three children. She was surprised by the bitterness that she felt. Mixed in with the grief was a profound sadness that, over the years, her mother never once expressed any gratitude for her middle child's tireless help—even in this last decision.

Garrett's experience is common, says Steven Hendlin, a California psychologist and author of *Overcoming the Inheritance Taboo: How to Preserve Relationships and Transfer Possessions*. "However the parent decides to divide the estate, the kids will take this as their final grade as to how the parent felt," he says. "It may not be true, but that is how it's interpreted because it's the parent's final wishes."

The things a parent says to a child in life—or even on his or her deathbed—can be eclipsed by the emotional weight of a will, argues Hendlin. Suddenly, a legal document boils a lifelong relationship down into a bank account and some belongings. Children are rarely prepared for this emotional referendum.

Children often overcompensate late in a parent's life for earlier shortcomings, says Hendlin. Some kids devote a concentrated period of time to caring for an ailing parent or schedule a vacation together. Unconsciously, children may be trying to rid themselves of guilt or improve that "final grade."

Wills also tend to reawaken ancient sibling rivalries; children, even adult children, are extremely sensitive to perceptions of unfairness. Garrett felt that her mother's will, by ignoring her sacrifice and loyalty, proved her suspicions that her brother had always been favored. "When a parent dies, everything that happens with the siblings is exaggerated," says Hendlin, who has spent 30 years counseling clients through inheritance turmoil. "Children see it as a repetition of all the conflicts that came before." Yet few people consciously realize that will-related disagreements are new manifestations of old family dynamics, says Elizabeth Arnold, a California tax attorney and author of *Creating the Good Will*, a guide to the emotional side of inheritance.

Many parents want to acknowledge the contributions of a caregiver, but balk at enshrining it in their will because it clashes with the notion that children should be loved equally, says Arnold.

Estate planners agree that a will is not the place to play favorites. A "performance-based" inheritance plan—favoring or punishing one child—is a surefire recipe for relationship breakdown among heirs, especially if such a plan is unexpected. Had Garrett received 50 percent of her mother's estate and her two siblings each received a quarter, it's likely Garrett would have had to contend with their resentment.

Instead of taking out her frustrations on her siblings, Hendlin advises Garrett to examine her own expectations during the time she was taking care of her mother. "If she feels anger toward her mother for not favoring her and bitterness toward her sibs for not getting their hands dirty," he says, then she was probably expecting an eventual payoff for her good deeds. On the other hand, if Garrett felt it was her duty to care for her mother, she probably would be disappointed that her mother never acknowledged it, but would not necessarily resent her brother and sister.

While most children expect to receive part of their parents' estate, if there is one, the majority of families never discuss how inheritance will actually play out. It's not unusual for parents to find it easier to deal with the legal aspects of their estate than to talk to their children. Had her mother written Garrett a letter, thanked her in person, or given her a small gift in appreciation of her help, Garrett probably wouldn't have felt conflicted, says Arnold.

ANSWER: Realize that wills are lightning rods for grief and unfulfilled emotional needs.

Garrett can't talk it over with her mother, but she can move on. As a first step, Arnold suggests that she write a letter to herself that expresses the gratitude she wishes she'd heard from her mother and siblings. "Read it once a day for a few days," says Arnold. Next, she'll have to try to change her own attitude toward her mother, and even her brother and sister. Arnold suggests acknowledging the blind spots and life circumstances that influenced her siblings' behavior.

Most importantly, Garrett should not judge herself by her mother's decision, says Hendlin. "She needs to tell herself: 'I did the best I could to take care of my mother, whether she was difficult or not. And for whatever reason, my siblings didn't want to join me.' "

The Family Jewels: How to Divvy Up Heirlooms

Estate attorneys hear it all the time: "My children would never fight over my will." Yet nearly everyone knows families torn apart by an inheritance.

The most contentious items are the one-of-a-kind heirlooms—and the emotions associated with them. The worst thing you can do? State in your will that your personal items should be distributed "equally" to your children, which will practically guarantee a tussle over the beloved artifacts.

Consult an attorney about your state's specific laws, but consider some of these suggestions as starting points:

- Give treasured items away in person while you're alive. You'll also be giving your heirs a memory of your affection for them.
- If you anticipate tension, leave explicit instructions in your will, perhaps accompanied by photos or a video. Your children will be hard-pressed to disagree if you explain in detail why you made the decisions you did.
- Ask your kids what they want. You may think your son would love to inherit your antique gun collection when he'd much rather have your old cookbooks.
- Use rotating choice. Gather your children for a house tour. Go room to room and allow each one of them to take turns having first pick on one item in each room.

Don't think these strategies will work? State in your will that personal items will be sold at a private auction. Each family member can bid on any object, with winning amounts deducted from the bidder's share of the estate.