

THE WEEK

December 8, 2014

6 tips for navigating the estate-planning talk

From getting documents in order to avoiding family friction...

By Sheryl Nance-Nash, *LearnVest*



As an estate attorney, Jeffrey Verdon has seen his fair share of family arguments. But the one that sticks out the most in his mind was actually a saga related to his own family.

After his mother died of cancer, a battle ensued over the family company, a successful food business that he and his mother launched together. Unfortunately, she had never put an official succession plan in writing, so once she was gone, all of the children started vying for control.

"She never communicated how she expected her estate to pass, or who she wanted to be in charge of running the business — and all hell broke loose," says Verdon, whose practice is based in Newport Beach, Calif.

Expecting a lengthy legal battle, Verdon donated his shares to charity — and his siblings fought over the rest of the company.

"The lawyers got most of the estate in legal fees, and the business was sold because of poor succession planning," Verdon says. The lesson? "It's risky to leave your estate and financial affairs unattended," he adds.

Unfortunately, this predicament isn't unique to Verdon. According to 2014 [research](#), 64 percent of Americans don't have a will — including more than half of those with kids — which not only exposes their families to the potential for discord, but also increases the chances that assets they leave behind won't be handled the way they want them to be.

But with the family-gathering holiday season upon us, now may be an ideal time to think about having that all-important estate planning talk. "It's often difficult to get family members together to meet in person — except on holidays," says Ronald Fatoullah, an estate planning attorney based in Great Neck, N.Y. "So, in that respect, it makes sense to at least spend a few minutes explaining what documents you have and why, and to set forth your wishes."

To help facilitate your own family finances talk, we gathered tips from some estate planning pros across the country on how best to share your personal decisions with loved ones. Read what they had to say about how to prep for the talk, which documents you should have in place — and how you can help avoid family friction.

Estate talk tip #1: Choose the right people for the right roles

One common mistake people often make in the estate planning process is to base their decisions on what they *think* their family members would want, rather than what their own wishes truly are, particularly when it comes to assigning roles and responsibilities.

"While people often consider the feelings of their family, I encourage them to take the emotion out of the equation," says Letha Sgritta McDowell, a certified elder law attorney with Walker, Lambe, Rhudy, Costley & Gill, in Durham, N.C. "Acting as a fiduciary [a person who is legally responsible to act on your behalf] is a job — and they should pick the right candidate for the job."

This means taking into consideration whom you truly believe would be best at handling tough responsibilities — be it your health care proxy, financial power of attorney, the [guardian for your children](#), or the executor of your will — and ideally with guidance from an estate-planning professional. "My job is to help clients think through the characteristics of who would be good at a certain function," McDowell says. "Most families seem to understand why certain people were asked to perform certain tasks once they realize what the entire task entails."

"Being the executor or trustee is an honor, but it's also a big responsibility with potential liability if that person handles things improperly," says Robert Kaplow, an estate-planning attorney with Maddin, Hauser, Roth & Heller, in Southfield, Mich. "If an individual will be too scared to take on the responsibility, then you do not want to name that person, as they will probably do a poor job. And if you can't find family members to do it, you can name a bank's trust department."

Estate talk tip #2: Set the tone of the talk

Depending on your family dynamic, you can keep the discussion a purely family affair or opt for a more formal talk and enlist the help of an estate attorney, who can act as a facilitator.

Kaplow prefers the casual approach. "I don't believe a third party should be present," he says. "I think it makes [the meeting] too formal and antagonistic. This should be a friendly discussion among family — not a preliminary bout to future litigation."

That said, some clients like having a level of formality because an attorney or a financial planner can help explain the reasoning behind some of their decisions. "In that case, the initial discussion should be started by the person making the will, but the third party can take over and answer questions," Kaplow adds.

And McDowell finds that clients often prefer to have the family meeting in her office when there are very palpable differences of opinion between family, because the neutral ground enables people to feel more comfortable expressing their feelings.

"I tell clients that I am unable to change people's personalities, but I can dispel myths and point out flaws in logic," she says. "Many arguments that occur around estate planning are based on misinformation or feelings of entitlement. The misinformation is easy to dispel, and I often quash the entitlement argument when I point out that the assets in question belong to the client."

Estate talk tip #3: Prepare your paperwork — and bring copies

Once you've figured out who you want handling the key roles related to your estate, get the necessary documents drafted in order to officially cement your wishes. (And don't forget to include an Advance Healthcare Directive, which states your preferences for medical treatment. Depending on your state, this could include completing a living will and filling out your health care proxy.)

Fatoullah says getting the proper paperwork drafted up and notarized before you have the larger family talk — and having copies on hand — can help ensure that there's no room for misinterpretation about what you want.

"Everyone has to be on the same page — and that page is *your* page," he says. "So you have to name appropriate individuals whom you are confident will carry out your wishes, and have the document set forth the parameters of the decision-making."

Estate talk tip #4: Prep your answers ahead of time

Once your plan and estate documents are in place, it's time to put it out there. But as with any topic that should be broached with care and sensitivity, practice what you'd like to say, and if it helps, write it down, suggests Debra Speyer, a Philadelphia-based estate planning attorney.

This includes being prepared to give clear answers as to why you chose a particular person for a specific duty, and what your goals were in setting up your estate plan.

"For example, you may say, 'I love both of my children, but because my son has filed for bankruptcy several times, I am concerned that the stress of estate administration will cause him to fall behind again,' or 'We love all of our children, but X lives closest and we feel that it would be easier for X to act on our behalf,' " explains McDowell.

If you're having the family discussion with an estate attorney or financial adviser present, you should also decide which questions you want to field, versus what you'd prefer to defer to the professional.

"I meet with the client ahead of time to find out if they want me to take the lead or whether they want to take the lead," McDowell adds. "When we take questions from the family, if it is legal in nature, such as 'What does an executor do?' then I answer. If they are personal, the client answers."

Estate talk tip #5: Keep discord at bay

While death and money are never fun topics to discuss over dinner, remember that this is about creating an intimate and positive experience for your family. The goal is to let them know that you care about securing their futures, as well as give them a chance to let you know they care about following through on your wishes.

"The biggest mistake is to make the meeting confrontational," Kaplow says. "It shouldn't be a setup for a new reality show. So if a child raises legitimate concerns, address them in a forthright manner, but be careful not to create animosity among the other children."

And if the conversation starts to unearth major drama, don't be afraid to quash it right away. "It's helpful to set ground rules for the discussion," Kaplow adds. "And if it gets too argumentative, then it's your prerogative to cancel the meeting if your family can't discuss the issue rationally."

Estate talk tip #6: Remember that it's an ongoing discussion

While an estate plan may seem very final, a lot can change by the time it will need to be implemented. For this reason, it's important for family members to understand that, as circumstances change, you may be updating your decisions along the way, so don't feel pressured to lay out every single detail in your initial meeting.

"You can set up another family meeting or conference call, even over Skype or FaceTime, to go over these issues in more depth," suggests Fatoullah.

In fact, setting the expectation that you plan to communicate periodically about your estate may help prevent future tensions. "If for some reason changes are made to the plan and later not communicated, then this leads to more venomous fighting because of the perception — real or imagined — of undue influence," McDowell says.

After all, new marriages, divorces or the arrival of new children, grandchildren, or stepchildren could all merit changes in your plan. "By regularly conveying your wishes, you can avoid the 'Dad would have wanted this' argument," says Laura Meier, an estate planning attorney and

author of [*Parents Worry, Great Parents Plan — Wills, Trusts and Estate Planning for Parents of Young Children*](#).

Meier recalls one family who had to work with her firm because the father's outdated will didn't account for the fact that his adult daughter and her son were living in the home at the time of his death. The will stated that all his assets should be split up equally between his seven children, which meant selling the house. But half of the siblings believed the father would have wanted his adult daughter to remain in the home, while the others wanted the dad's will to prevail, which meant the daughter and her son would have to move out.

"The children that wanted her to stay pooled their money together to buy out the other siblings" and made arrangements for the sister to pay them back, Meier says. "But the family was torn apart. To this day, they have never fully reconciled."

Ultimately, tackling these types of important decisions early on — and keeping your relatives in the loop — can only help bring the family closer together. "The kids will want to prove to mom and dad that they have what it takes, and it will also save professional fees when it's time to take over," Verdon says. "It can be a very personal and intimate experience."