

Price & Farrington's Estate and Tax Planning FastFaxts

November, 2004

Estate, Tax, Business and Wealth Planning for Advisors and Clients

Price & Farrington, PLLC

Attorneys and Counselors at Law

12501 Bel-Red Road, Suite 215

Bellevue, Washington 98005

425-451-3583

Email: contact@pricefarrington.com

Estate Planning Stories: *Making Sure You Don't Star in Your Own Horror Show*

Your success in planning depends on how well you've written your family's estate planning screenplay. Too often a supposedly family-friendly script turns into a tale of confusion, intrigue and tragedy. No exaggeration: costly screw-ups in the design or execution of your estate plan can produce a real life horror story in which your family members play leading, albeit unwilling, roles. There are all too many examples:

Warm Spit, Crocodile Tears and Dirty Cleats

An Ocala, Florida attorney writes: "Three way will contest. The last will named a home health nurse as sole beneficiary (to award his twelve weeks of dedicated service?). The will before that named decedent's cousins. The will before that named my clients, sisters of the decedent's previously deceased wife. None of the wills were attorney-drafted — and none of the beneficiaries were worth a bucket of warm spit. Mediation resolved the case at the last minute.

At mediation, my clients insisted on having the decedent's body disinterred and sent to Missouri so he could reside forever next to their dear departed sister, his wife of many years — and they would pay for the

new plot. The cemetery agreed to "dig and ship" in exchange for the lot and some cash, which my clients paid.

A few weeks later I got a call from FedEx telling me that my clients had refused shipment of the body. When I called my clients (who previously cried buckets of crocodile tears every time the deceased's name was mentioned), they said, "Let the bastard rot in a warehouse for all we care — he tried to cut us out of his will!" The estate was already closed, the decedent's lot was already sold, and to the best of my knowledge, FedEx still has custody of the dead guy.

You've got to be pretty confident that there is no such thing as an afterlife, a higher power, kismet or karma to be that morally corrupt. That was my last estate litigation case — just had to hang up the cleats after that one."

To B or Not to B

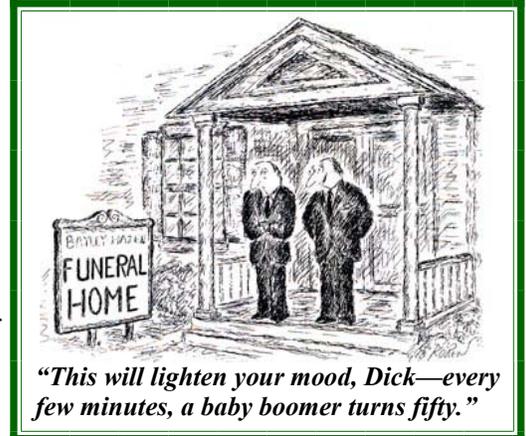
An Austin, Texas attorney writes: "Mom and Dad bought a trust package through an advertisement in the newspaper. The vendor told them (incorrectly) that they could not get the A-B estate tax benefit they sought if the surviving spouse was the trustee of the B trust. But hey! The vendor was not a lawyer, so what did he know. Sooo...Mom and Dad named their children as trustees of the B trust. The children are also the successor beneficiaries of the B trust.

Mom dies. Dad remarries. Kids don't like Wife #2 and refuse to distribute to Dad from the B trust for his needs. Litigation ensues. A real mess."

Shocked Felon Puts on Heirs

The same attorney writes: "Dad, a convicted felon, gives children up for adoption, then dies intestate [without a will]. Child who was kept, also a convicted felon, is unhappy (maybe 'shocked' is a better word) to learn that those other kids are full heirs. Posthumous paternity

**HAPPY
THANKSGIVING!**



testing is a distinct possibility to determine who, if any, are really children of Dad. Big expense in sight for \$1.2 million estate."

More Felonious Planning

The same attorney writes: "Dad, a convicted felon, dies without a will. The woman he's been living with for years now, who is also a convicted felon, claims to be his common law widow. (This is not what she's been claiming in order to get VA benefits as another man's widow.) Some of the kids have felony convictions and are ineligible to be the administrator of his estate. Litigation results. Note: I never say 'costly litigation' because that would be redundant."

Uncle Ralph and Aunt Nancy

An attorney from Little Rock, Arkansas writes: "Uncle Ralph and Aunt Nancy have no children, and presumably no assets. The people with whom Ralph and Nancy celebrate Christmas and holidays are Ralph's family. Ralph and Nancy tell several members of Ralph's family that they've been named in Ralph's and Nancy's wills. Uncle Ralph dies. Two years later, Aunt Nancy dies. A will of Nancy's is discovered

Thought Provokers....

"A smooth sea never made a skilled sailor."

"Great minds discuss ideas. Average minds discuss events."

"Many people will walk in and out of your life. But only true friends will leave footprints in your heart. To handle yourself, use your head; to handle others, use your heart."

"He who loses money, loses much. He who loses a friend, loses much more. He who loses faith, loses all."

Estate, Tax, Business and Asset Protection Planning provided by
Price & Farrington, PLLC
Attorneys and Counselors at Law
www.pricefarrington.com

in a desk in the house. Nancy's will names Ralph's family as her beneficiaries.

Nancy was an executive secretary and she literally typed everything. I was shown Christmas cards and other correspondence that Nancy typed in her punch typewriter. Not surprisingly, she also typed her own will—and failed to get two witnesses.

After Nancy's death it was discovered that Nancy had two half-sisters with whom Nancy was not raised. The half-sisters were believed to be dead but it was unknown if there were any surviving children. I'll give you three guesses what happened next. Yes, the half-nieces and half-nephews, who Nancy never met, showed up and contested her will. Nancy's attempt to save a couple hundred dollars is going to cost her 'family' over \$1.5 million.

Moral of the Story #1: When the beneficiaries of your estate are not your blood relatives, extra precautions should be taken to get the right outcome. Moral of the Story #2: (this one is from Ralph's family): When someone tells you that you've been named in their will, ask to see a copy, take it to a lawyer, and get it done properly."

Son #1, Wife #3 and the Liquor Store

The same Arkansas attorney writes: "Here's a similar case I had where they should have seen the writing on the wall. Dad dies, having engaged in piecemeal estate planning with a small town lawyer who was a friend of his. Dad has a living trust that provides for his wife for her life. Mind you, this is Wife #3. The trustee of the living trust is Son #1 from marriage #1...and Son #1 was older than Wife #3. Everyone got along on day one. 18 months later, Wife #3 goes to court and demands an accounting.

Son #1 kept no receipts, no good records etc. Many of the claimed expenses were disputed, including the liquor store expense incurred in the purchase of the alcohol for Dad's wake. Son #1 relates that Wife #3 was actually pushing the shopping cart.

Long and short of it is that we spent about \$20,000 arguing over \$12,000 worth of expenses because it was more about winning than it was about the money."

The Bonnie Bast*rd

A Flint, Michigan trust advisor for JP Morgan writes: "When I was in private practice, I had the unfortunate experience of dealing with a case that cried out for proper planning in advance, but Dad didn't believe in using attorneys.

It was a second marriage situation.

He had children from his prior marriage (referred to by his second wife as the 'Bonnie Bastards') and a child with his second wife. She had no other children. The family started out with the step mom moving in, and the 'Bonnie Bastards' moving her stuff out the back door as other stuff came in the front. Dad had a lot of rental property (just under a \$2 million estate) all titled in his name. He never prepared a will because 'it would all work out and I don't need the expense of an attorney'. When he died, the probate code said his wife was the preferred executor. The 'Bonnie Bastards' were not happy with the probate judge's ruling on that. I represented one of the children from his first marriage.

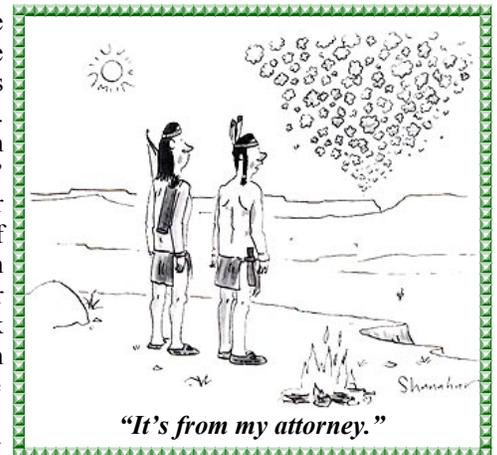
In the end we had four attorneys involved representing various parties. We spent a lot of time in court arguing. We tried to settle, with two of the other attorneys and I advising our clients that if we continued as we were there'd be nothing left to fight over because the legal fees would take care of the estate. The responses we received: 'I don't care because then at least he/she won't have it.'

In the end, three of us got out of the case because the fight was of more interest to the parties than any resolution. I never heard what finally happened in the case. I was afraid to ask my friend who agreed to take my client on what the result was after another two years in court. The fees my client paid me were at least double what Dad would have paid me to properly plan the estate, and remember I was only one of four attorneys on the case and I got out early!"

Revenge of the Reaper

A Barre, Vermont attorney writes: "I did a will and powers of attorney for a client about fifteen years ago. She since had health problems. I'd occasionally run into her and she'd mention she would be calling to change her documents. Then I get a late Friday afternoon call from the hospital. She wants me to come up and see her in the hospital to change her powers of attorney.

I arrive and she tells me the doctors have given her three months. She wants to change her powers of attorney now. Also wants to change her will because everyone she left things to has died. She doesn't know who she wants to name as beneficiaries, aside from leaving her car to Mr. X, who was visiting in the room at the time. I couldn't get her to discuss the



will further.

The next morning with the new powers of attorney in hand I return to the hospital, to find she's slipped into a non-responsive state. She died on Sunday, never regaining consciousness.

Her estate is still in probate. We have had to hire an heir search firm to trace the genealogy of the named beneficiaries who predeceased her. The estate will go to their heirs, who she probably never knew. Meanwhile, some relatives in the area and several close friends will get nothing.

She knew for years she had a health issue. In fact, she was a retired nurse who was highly trained. She also knew for several years her beneficiaries had died.

Message: when you know you need to change your estate plan, do it! Don't wait until you 'get around to it'. The Reaper might get around to you first." ■

As always, we are available to help you write, produce and direct your estate plan. Our goal is to keep you (and your family) from starring in your own horror show. You're in charge of casting, costuming, scripting and cinematography. We'll help you achieve a happy ending.

You can visit us at www.pricefarrington.com or e-mail us at contact@pricefarrington.com.



Glen D. Price