

“Let our advance worrying become advance thinking and planning” – Sir Winston Churchill

ELDER LAW TODAY

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I am at my computer today, December 15, 2016 and anticipating the kids and grandkids coming tomorrow. We are celebrating Christmas early. Now for the topics in this newsletter: sibling rivalry and how to (hopefully) prevent it when you are gone; biggest mistakes executors make; and a “down and dirty formula” for calculating if you need long term care (nursing home) insurance. Sibling rivalry and how to help prevent its impact on your estate plan. Sad, but true, when a parent dies, it’s not uncommon for the children to get into a dispute over asset distributions (and this is true in estates of all sizes!). And the item in dispute can be of minor value (a watch, an old suitcase, a wedding ring – you get the picture). So, instead of a simple Will that leaves “all assets to my children with the personal property to be divided as they decide” instead have a detailed listing which sets out which items of sentimental value will go to which child – and instead of “cluttering up the Will” you could handle this with a “handwritten codicil” which you could write out (not type) in your own handwriting and sign it, stating that it is a “codicil” to your Will. It doesn’t have to be notarized or witnessed. Just put it in the same envelope with your Will. And, if you decide to change it, simply tear it up and write a new one. According to a Wall Street Journal article I read, “one of the most common causes for family fights after a death is the feeling by one child, whether warranted or not, that he or she is being treated unequally compared with the others.” Hard feelings can also occur when only one child is named trustee of a family trust. Also, family fights can be minimized if there is good communication between the parents and kids while the parents are still alive. And, if the parent knows that the kids are not likely to get along, consider naming an independent executor and/or trustee rather than the kids (naming them as co-executors is a recipe for disaster)!! And probably naming one of them to the exclusion of the other may be little better in terms of family harmony. Recognize that if there is a dispute, attorney’s fees and court costs, not to mention the loss of family harmony, will be a big price to pay for your failure to properly anticipate problems in carrying out your Will. And, you can always add a “no contest” clause

to your Will to discourage fighting after your death. The biggest mistakes executors make. Although being appointed an executor may seem like an honor, it may not be all its cracked up to be. If you accept the appointment (and you don’t have to –there have been situations where I recommended a client NOT accept the appointment) you need to realize that you have the legal responsibility to make sure that all debts are paid in a certain order before distributing the assets to the beneficiaries –and IF YOU DON’T YOU CAN BECOME PERSONALLY LIABLE TO THOSE CREDITORS!!! For example, let’s say you are named as the independent executor of an estate and as soon as you are appointed you immediately begin paying the decedent’s credit card bills – because the statements say they are due. In fact, these “unsecured debts” are well down on the list of priority in terms of what debts must be paid first and, if by chance the estate is insolvent (that is the debts exceed the assets), you may very well have breached your fiduciary duties by paying these credit card bills! Or, another example, maybe the decedent owed a large income tax liability, but you as independent executor didn’t know it –and you make payment of the “lower class” debts (like the credit cards) not leaving enough funds to pay Uncle Sam –guess what, you have potentially personal liability to Uncle Sam for having done that!! Another potential liability: you decide to “invest” the estate’s assets in the stock market because interest rates on federally insured funds are abysmal, but then, after you make the investment, the market heads south. You had no obligation to make the assets increase in value –but you tried to and it didn’t work -- and you will likely be liable to the beneficiaries for the stock market loss!! If there is a house in the estate, beware of “making improvements” to it in the hopes it will increase the value. Also, if there is a house or other building that is depreciating in value (and requiring maintenance, casualty insurance and property taxes to be paid) it’s a good idea, as a general rule, to try to sell it as expeditiously as possible to reduce the “holding cost”. Plus, insurance companies don’t like to insure vacant buildings. If you are appointed executor, immediately

prepare an inventory and don't let folks (read family members) start taking assets out of the estate until you have properly administered the estate -- because you can get sued if the person taking it was not entitled to it according to the Will. Also, don't succumb to pressure from beneficiaries to make distributions from the estate until you are positive that all creditors have been paid—your job is not simply to distribute the assets!!! Should I buy long term care (nursing home) insurance? Here is a formula I read about in the WSJ. In Texas the average cost of care in a nursing home is around \$60,000.00 to \$70,000.00 per year. Let's assume the higher number (\$70,000.00) Compute the cost of a nursing home stay – the average is 2.4 years. Multiply $2.4 \times \$70,000.00 = \$168,000.00$. If you are married double it: $\$168,000.00 \times 2 = \$336,000.00$. If your assets won't cover these potential nursing home bills, or could leave your spouse struggling financially, long term care insurance may be the right choice for you.

That's it for now. I am attaching a copy of the grandkids picture: from left to right: Drew and Ruth Campbell; Clara and Grayson Barkley. Have a HAPPY NEW YEAR!!



Elder Law Today is written by C. Dan Campbell, Attorney at Law, who is Board Certified by the Texas Board of Legal Specialization in Estate Planning and Probate Law and Civil Trial Law. This newsletter is not intended to be nor should it be construed as the giving of legal advice. Before taking any action referred to in this newsletter you should consult with an attorney who is knowledgeable in this area of law. This newsletter is published as a service of C. Dan Campbell, P.C., 4245 Kemp Blvd., Suite 800, Wichita Falls, Texas 76308. Visit our website at: www.cdancampbell.com

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