# When Parents Die

## *Three Things You Can Do To Avoid Family Conflict*

By Scott G. Beattie, JD, LL.M (Tax)

Some of the most rewarding experiences I've had as a trust and estate attorney involve working with families after the death of a parent. While it is a time of grieving, it is gratifying to see families pull together to resolve wealth transfer issues. Some families build a culture of support and cooperation which continues after the death of a parent. Other families face major challenges working together. Still, I often see families honor their parents by overcoming differences in resolving their parents' estates.

Unfortunately, this is not always the case. For some the death of a parent is the starting point of a battle over the disposition of family wealth. These battles do not just erupt, rather they are simmering in the background waiting for the parent to pass. This is an area of the law where it doesn't take two to tango. Any unhappy heir can file a lawsuit given the desire to do so.

The saddest cases involve situations where a family member has taken advantage of an elderly parent (often in weakened physical or mental state). The number of cases involving elder financial abuse and undue influence seems to have increased in recent years with the decline in the economy. Some children feel justified in helping themselves to a share of their parents' estates and are willing to use wrongful means to get it. These cases can be expensive to resolve, but we do have a solid body of laws designed to protect the elderly. Penalties in extreme cases can include loss of an inheritance.

A parent can help reduce the risks of such legal battles in their family by recognizing the potential problem and putting a plan in place designed to address areas of postmortem conflict. Admitting the potential for problems is often the first step. Putting the right persons in charge (including an independent Trustee or fiduciary when necessary) can also go a long way toward preventing an ugly battle in the future.

***(1) Communication. Good communication is a key to success.*** While parents are living and able, I encourage them to communicate their plans with their children if the circumstances enable them to do so. This helps bring problems to the surface and allows concerns to be addressed. If the parents cannot do this on their own, a facilitator can help. After a death, the Trustee or Executor must work hard to communicate with heirs the process for administering and distributing the estate so heirs do not become frustrated with delays.

***(2) Control of Key Assets.*** Families frequently fight over the control or value of a family business or other key assets (real estate). A well thought out plan will address who should be in charge and what price should be paid if one or more family members are going to buy out others. A plan should be in place for paying estate taxes and other administrative costs for dealing with such assets. Good planning is essential if a family business is to continue.

***(3) Seek Expert Advice.*** It is far less costly to plan in advance, than to try to solve problems after they surface. Discuss your plan with your professional advisors including your CPA or tax preparer, financial planner, and qualified estate planning attorney. Other experts such as family counselors and family wealth transfer specialists can help with challenging cases.