

# Probate Wars

By Kristen M. Jackson, Attorney At Law

Don't let sibling rivalry get in the way of maintaining your family's history.



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It is every parent's dream that when their children are grown and their own parents die, the children will continue the family values, history and loving relationships that were taught to them. Unfortunately, more often than not, the last living parent is the only glue holding the children in the family together—if they ever truly were, in fact, together. Sometimes parents have unrealistic expectations about family. Most parents believe their children have undying love for one another and will get along after their deaths. Even in the most loving families, this love is put to the ultimate test when mom and dad die.

Whether it is biblical brothers Cain and Abel, or the comical duo, the Smothers Brothers—"Mom always liked you best," sibling rivalry is the chief factor in many disputes arising after the last parent dies, but they are not the only ones. As in the cases of Michael Jackson, Anna Nicole Smith, Heath Ledger and other celebrities, disputes can involve mothers, fathers, aunts, uncles, friends, business acquaintances and more.

You may have heard "An ounce of prevention is worth a pound of cure." This is particularly true when it comes to avoiding squabbles among siblings during probate of their parent's estate. Probate is a legal court proceeding to determine rightful beneficiaries and distribute your assets upon your death. Whether probate is required depends upon what assets you own and how they are titled and what estate planning has been done. If you have no will, or only a will, probate is generally necessary to pass your assets to your heirs. On the other hand, if you have a properly funded living trust, probate will generally be avoided. When probate is required, even the decedent's favored beneficiaries may suffer. To prevent unanticipated dissension and a tug-of-war over assets, which often ensues after a death, proper estate planning is paramount.

Probate can take from several months to several years, may cost thousands of dollars and the proceedings are public record. When siblings or other beneficiaries begin tugs-of-war over assets, also known as probate wars, time and cost often increase as a result of the rivalry disputes or litigation. At the loss of a loved one or a friend, you or someone you know may have experienced firsthand or encountered warning signs of a war. A son or daughter arriving for the funeral wants to stay in mom's house (now estate property) while expecting others to stay in a hotel so they might pick through any valuables and take or give items to charity before the other siblings even exit the plane. Statements are made such as, "My other brothers

and sisters have more than me," or "... are more successful than me," and "Mom wanted everything she owned to go to me."

Those involved in an estate dispute will rarely admit that they are fighting only for the purpose of gaining money or other assets. Instead, they will argue on the basis of the true wishes of the deceased. Often, the decedent's true wishes are challenged by one beneficiary arguing that another beneficiary exerted undue influence upon the decedent at the time he or she signed the will or gave certain assets away. The beneficiary who is trying to uphold the will or gift in turn argues that he or she is defending the true wishes of the deceased.

Then there is the "fairness" argument which generally surfaces when one of the beneficiaries received considerably greater help during their lifetime from mom or dad, such as payment for a college degree while another had to work and earn his or her own education. Of course, the beneficiaries who received less while the parents were living believe those who already received benefits from mom and dad should receive less of the estate assets and that it is time to even things up.

It is not whether the estate is large or small, simple or complex, that matters. It is the family history that counts. By planning your estate and memorializing your wishes with properly drafted documents, you can reduce or eliminate the potential for a probate war and preserve the family harmony after you have passed. If you do not already have a will or a living trust, consult with your family and an estate planning attorney to discuss the distribution of your estate. **L**

