



The Talk

By: James K. Leese, JD, MST



Have you ever had a client want to disinherit an heir? If so, perhaps you should recommend the “talk.”

Few clients truly understand what long term consequences the election to disinherit a “loved one” causes. The trickle down effect of disinheritance is easily lost - but, there will be a trickle down effect which can lead to harm to the other family members and their relationships.

I’m convinced that unless the “hurt or ignored” client acts responsibly and has the “talk” with the person who is offending them, that the effect of the “out of the blue” disinheritance may unwittingly breed family contempt between siblings, and their issue, for generations (the Hatfield’s and the McCoy’s).

Without the “talk” all of the “evidence,” doctor’s certificates, letters of intent, in the world will not overcome the emotional impact and explosion of the disinheritance. Those left behind often suffer the wrath of the one that was disinherited (lawsuits, depositions, or destruction of relationship). There is no guarantee - even with the “talk” that the disinherited person will not pursue their legal rights and remedies. However, they will be doing so with the knowledge of that is what the client wanted, not what the sibling pushed the parent to do.

Also, bringing up the subject of the “talk” may lead the client to consider whether there are other ways to accomplish their goals. I’ve seen clients consider the use of lifetime benefit trusts (or other restrictive trusts) for a child who is a spendthrift, lazy, addictive, in lieu of disinheriting them. Lifetime trusts, or pool trusts for the child with a third party trustee managing the assets is a great alternative to disinheritance. If a client can’t communicate with a child, or a child is having mental or emotional problems, using a lifetime trust can still protect the child and breed grace and what a friend of mine calls “undeserved human kindness,” to those who may not deserve it because of their actions.

In summary, the long term consequences of disinheritance should be something the client understands and appreciates. I’ve witnessed some miracles after the “talk.” Fathers and mothers reconciled with a (disfavored) child because either the child now knows that they will be disinherited if they don’t start treating dad or mom better; or because a line of communication is opened that brings to light the parent’s problem with the child that the child may or may not even be aware of.

For the disinherited person, it is a different story - I call this the “forgiveness” alternative.

A woman once came to my office after being disinherited by her father (some other attorney had drafted the father’s trust). She was distraught. Why did her father do this? Was her brother to blame? Her explanation was that brother had been closer to father and perhaps the father was jealous of the time she was spending with her “second husband” and his family, and that the father disapproved of the new relationship.

Some would advise her to sue the father’s estate and the brother to try and get something (which could have settled perhaps for some small amount) - after she considered the emotional results. However, I described the risk in doing this is that, win or lose, she might carry around anger at her father for the rest of her life. The anger could destroy any hope of relationship with her brother. The anger could turn to bitterness. The bitterness could affect her life and her other relationships. In finally, maybe even what is more important, it could give a distorted picture to her children of a hateful way to deal with loss that they would take into their own lives and relationship and cause even more harm.

Her other option was the “forgiveness” alternative: get angry with her father and then do whatever it takes to forgive him. Clearly her father is dead so there would be no actual conversation. What I suggested is that she go to his grave site or just stand somewhere and say to the sky or God, or whomever, that this makes her angry, it is unfair, but no

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matter what she must choose to love her father and forgive him to be free of it.

It may take several years, but this forgiveness “discussion” can lead to peace, and miraculously it does come. Forgiving her dad, and choosing to love him unconditionally could make her own life and her relationships better, her children could see a different, kinder, more a forgiving side of life that from all accounts is undeserved. Whether it worked or not, only God knows. But doesn't it sound like great advice?

About the Author:

Jim Leese is a partner in the law firm of Ferruzzo & Ferruzzo, LLP. Jim was admitted to the California Bar in 1979. The State Bar of California recognizes him as a Certified Specialist in Estate Planning, Trust and Probate Law. He received his Bachelors degree from The Defiance College in 1975, Juris Doctor degree from Pepperdine University School of Law in 1978, and a Masters degree in taxation from Golden Gate University in 1992. Jim is primarily responsible for the firm's estate and business succession planning departments. He limit my practice to transactions involving business, estate and gift tax planning, preparation of trusts and wills, probate and trust administration for individuals and owners of businesses and works with the high net worth client, using sophisticated estate planning strategies and tools, as well as with the client who has non-tax related planning goals in mind. Since 1994, Jim has continuously taught the fundamentals of estate planning and advanced estate planning courses in the Personal Financial Planning Certificate Program at the University of California at Irvine Extension.