



Estate Planning, Trusts, Probate, Elder Law

## Thoughts from Jim...

### Leaving a Legacy

My profession is estate planning. Clients come to me for help on how to preserve their life's accumulations of wealth and how to pass it on to their loved ones.

What I do for a grandfather and grandmother with legal documents will hopefully convey through transfer of financial assets, a lasting memory of their love and appreciation in the eyes of their children and grandchildren.

But the greatest material wealth my clients possess is not nearly as vast as the richness of knowledge, morals, and wisdom that they hold in their hearts for their families.

A person's legacy is not solely in the assets they leave behind, and one tradition dating back to biblical times – the ethical will – lives on to provide a vehicle for an individual's intangible fortune.

An ethical will, or legacy letter, is a document designed to pass on ethical values or life lessons from one generation to the next. It is drafted by you, not me or any other attorney. There are examples of early ethical wills written throughout the Christian Bible, the Jewish Torah, and they are even contained in the oral traditions of Native Americans.

Ethical wills often contain meaningful family stories, personal values and beliefs, statements of faith, blessings, advice, and expressions of love.

They may even share regrets, apologies, and final requests. There are no rules or laws about the length or content of an ethical will. It can be a few lines, or paragraphs or many pages in length...this is a case where it really is the thought that counts.

Your ethical will may be kept in a separate document with your last will and testament. However, as much as you hope your heirs follow your sage words and honor your legacy, there is no binding legal authority behind the contents of your ethical will.

Every ethical will is unique. And, while there is no standard format for writing one, there are resources available (books, audio CDs, DVDs and podcasts) to help you write your own.

I urge you to provide for the security of your family by crafting a solid estate plan. But, I also encourage you to be just as generous with your life experiences and values, leaving your loved ones more than just your material possessions. •

**Estate Planning**  
Provides  
**Peace of Mind**  
-Jim Perry

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# Q&A

## Estate Planning, Trusts, Probate, Elder Law

### Wills

#### **As an heir, do I have a right to see my grandfather's will?**

In California, heirs do not have a right to see another person's will or to know everything about the assets and distributions until after the person's death.

However, you are free to ask your grandfather about his will...and he is free to tell you "no."

Keep in mind, though, that even if you do see the will at some point, the testator may change that will at any time. A will is revocable at any time prior to a person's death.

If your grandfather has died and you're concerned about a particular personal item of his, you may require that the custodian of the will deposit the will with the court. If the custodian refuses, he or she can be ordered to do so by the court and may be subject to reimbursement of your legal fees connected to getting the court order.

### Gifting

#### **Years ago, I lent my son and daughter-in-law \$50,000 for a house down payment. They promised they would pay me back. For the first few years, the checks were timely. Then payments started arriving late, and now they make no payments at all. Do I take the balance out of the inheritance I would leave my son so that all my children end up with equal gifts for me during their lifetimes?**

You don't want your estate to be a creditor of your child upon your death. To avoid the potential for hurt and anger at your will-reading, you have a few options.

1) *Call the loan now.*

If your child pays the loan, the problem disappears.

2) *Forgive the loan and call it a gift.*

If repayment of the loan is not a reality, cancel it. Furthermore, if the debt has caused some tension amongst the siblings, you may want to announce it to the whole family that you are canceling the debt. This gives you the opportunity to clear the air and maintain (or restore) sibling harmony.

Then, you may choose to present your other children with checks equal to the unpaid balance plus interest to equalize. Or, you have the option equalizing in your will. Now that all your children know of the canceled debt, it shouldn't come as a shock when your son's portion of the inheritance is smaller.

### Estate Distribution

#### **After Dad died, my sister raided his house taking what she wanted, including some rare books that were promised to me. It's been years, but I'm still angry with my sister for her crass behavior. How do I prevent the same thing from happening between my children?**

As a general rule, I suggest to my clients that they leave all personal items and household contents to their children equally, leaving them free to decide amongst themselves what each of their shares will be.

This is not always possible though. You may have promised a certain item to a certain child; one child may have staked out an item that they feel entitled to; or your children may just be incapable of agreeing on anything.

You may use your will as your post-mortem referee, simply listing which items you wish to leave to which child.

However, your inheritance plan may be subject to public disclosure, and if you are concerned about your privacy, listing your personal items may make you feel uneasy. In which case, you may use a side letter to list and assign your personal items.

**Continued...**

# An update on the Estate Tax

## 2010 is still the year of death without taxes

In 2008, the federal government collected in excess of \$25 billion on individual estates via the estate tax, sometimes called the “death tax.” It’s been six months since the tax lapsed as part of legislation enacted under President George W. Bush in 2001.

Now, the death of one American billionaire, oil magnate Dan L. Duncan, is casting a spotlight on how much the federal government is not collecting.

Duncan’s fortune was estimated to be worth \$9 billion, ranking him as the 47<sup>th</sup> wealthiest person in the world. Had he died in December 2009, any part of his estate not left to his surviving spouse would have been taxed at a rate of at least 45 percent – at most, \$4 billion for the federal government.

The House and Senate failed to come to any consensus last year on legislation that would have prevented the repeal.

But, the Senate Finance Committee wants to reinstate the estate tax – the only question being whether the final legislation on the matter will include provisions to collect on the estates of those who have already died this year.

Advocates of the tax point out that the U.S. is home to more than 50 of the world’s billionaires over the age of 80, and claim that the repeal amounts to an unconscionable tax break for the ultra-wealthy in very lean times and historical income disparity. Opponents argue that the tax is unfair because it taxes the same income twice – once when it is earned and again when it is passed on to heirs.

Lawyers agree that any attempt to apply the tax retroactively to the Duncan estate will be met with well-funded legal opposition and arguments that a retroactive tax is unconstitutional.

Congress has another six months to figure out what to do with about Tax-Free 2010. The tax returns at a rate of 55 percent in January 2011. •

A side letter is not part of your official will and most likely will remain private. You keep it separate from your inheritance plan so it is not subject to public disclosure, but tell one or all of your children where the side letter may be found. However, because it is not a legal document, you children are not legally bound by its contents. The moral obligation they feel from having your wishes in ink, though, may be enough to prevent a family feud.

You also may want to discreetly tag individual items with the names of the children to whom you wish the property go. This option is less feasible with jewelry or other items that you continue to use until your death.

If there is no hope for agreement between your children and you don’t particularly care about the division of the assets, you may provide in your will that all your personal items will be sold at auction and the proceeds divided equally. •



### *The Bunny & The Billionaire*

The two met in a strip club and married in 1994 despite their 63-year age difference. When the bride was widowed 14 months later, she sued his estate for \$300 million.

Anna Nicole Smith argued that her husband, oil tycoon J. Howard Marshall had intended to provide for her, but had written her out of his will at the behest of his son E. Pierce Marshall.

Both Anna Nicole and Pierce died before the case was resolved, leaving their respective estates to duke it out in court.

In March, a U.S. federal appeals court found, though, that Howard was mentally fit and under no undue pressure when he wrote the will. Anna Nicole’s estate will not receive a single penny.

## THANK YOU

### FOR YOUR REFERRALS

Thank you to all my clients, and the many financial advisors, accountants, and attorneys who have referred family members and clients to me. Word of mouth is my largest source of new clients.

If you need a referral from me for a financial planner, a professional trustee, a care manager, a Certified Public Accountant, a realtor, or a long-term care insurance agent, please feel free to call me. I work with a number of highly competent professionals in many fields, and I am happy to give you several names and phone numbers.

*James D. Perry*  
Attorney and Counselor at Law



### Book Review

## Stop Throwing Your Money Away

A practical financial planning guide by Jamie Novak, "World's Most Relatable Organizer"

Back in April, I blogged about an issue I see all the time in my clients as they inherit personal property from loved ones who have passed away: the accumulation of "stuff."

We loved our friends and family during their lifetimes, and we tend to transfer that love into the items they pass down to us in their wills because those items evoke the memory of its previous owner.

But, with the exception of heirloom pieces and items that become truly utilized fixtures in our homes, most of these items end up taking up valuable storage space.

Throughout the book "Stop Throwing Your Money Away," author Jamie Novak acknowledges the memories attached to the stuff we accumulate.

She says that most people will simply tell you "You don't need to keep the actual object because you'll always have the memory."

Sometimes, this is true. In fact, six of Novak's top 10 principles for last success address the empty power that material objects have over us.

She stresses the fact that material possessions cannot fill an emotional hole, and notes that when you have too many possessions, you lack time, space, energy, and money which only leads to greater inner turmoil.

Also, she repeats the common notion that an object is not the same as a memory. Here, though, she cautions that this piece of advice is sometimes too simplistic. She rightly points out that the object may be the trigger for the memory.

However, true to her quest to "moneyize" (money + organize) your life, Novak suggests that, if all you need is to see the object to remember your loved one, you should take a picture and keep it in a scrapbook. Or, keep only a part of the object. As an example, Novak uses a broken chair with a needlework cushion sewn by your great-grandmother. She suggests you chuck the broken chair and frame the needlework.

This tactic may be especially helpful to the grief-stricken. It is proper and emotionally necessary to take time to grieve your losses, but even mourning has an expiration date. Clinging to the past leaves you rooted there, unable to enjoy the present or move forward into the future. Likewise, holding onto the objects you've inherited that do not practically enrich your life may only be dead weight, emotionally and physically.

Novak's book is full of advice and easy steps you can take to de-clutter your life, reduce waste, and save (or even make) money in the process. I hope that reading about how effortless and freeing the process of purging can be will energize you to rid yourself of the "stuff" taking up physical and emotional space in your life. •

**Stop Throwing Your Money Away -- turn clutter to cash, trash to treasure, and save the planet while you're at it!**

by Jamie Novak (John Wiley & Sons, Inc. - \$15.95)