

Legal Advice Can Avoid Family Feuds

Estate planning promotes peace

By James Daw
Toronto Star

Barb's mother died in May, but a younger brother who had earlier taken charge of affairs has refused to discuss or disclose their mother's will.

That has left Barb (not her real name) and the rest of her brothers not knowing what they stand to inherit or what is more troubling whether the secretive brother owes money to the estate.

Barb knows she owes part of what she agreed to pay for her mother's home before she became ill, but only has hearsay evidence about her brother.

She recalls what her mother said when another brother asked her: "What happened to the money from (selling) the house?"

"Well," said the mother, "I guess (my son, the executor) has it. You will have to fight him for it after I am gone."

"Oh, gee," exclaimed Thornhill lawyer Barry Fish of Fish & Associates Professional Corp. "This is the absolute worst attitude a parent can have."

The mother seems to have committed several sins in the religion of estate planning for family peace that Fish and his associate Les Kotzer preach to clients, and readers of their 2002 book *The Family Fight, Planning to Avoid It*.

The mother did not express her intentions to all of her children when she granted loans or other favours to some of her children, and she did not discuss the contents of her will.

She documented the loan to her daughter, but the siblings do not know whether she received a promissory note from their brother. If she did, they have no way of knowing whether the note has been ripped up. In any case, the sole executor will be under a cloud of suspicion until he opens up to his family. "Our book is about avoiding that very type of issue," Fish said yesterday. "There is a whole section we write on: Don't assume goodwill among your children, (because if you do) this is the very type of thing that is going to come out."

One of Barb's brothers got approval of most of his siblings to consult a lawyer. But the lawyer suggested, and Fish and Kotzer would agree, they should hold off from taking legal action.

Fish said a lawyer could file a motion in court that would compel the executor to produce the will by a set date. Nothing would prevent the siblings from acting immediately.

But Fish and Kotzer say that hiring a lawyer instead of trying to work things out informally, and in private, could be a costly waste of their modest inheritance. It's also a sure way to blow a family apart, an outcome the deceased parent would surely never have wanted.

"While alive, a parent has that magic wand to put out a fire (of jealousy and suspicion), but when the parent is not around, there is no one to put out the fire and it just grows," said Fish.

Then the responsibility falls on the heirs to think constructively, and not to put money and self-interest ahead of family harmony, for their own sake and that of their children.

Fish and Kotzer tell a touching anecdote in their book about a young woman whose wedding was spoiled by the absence of a dear aunt. The aunt and the bride's father had been treated equally in their mother's will, even though the aunt was the only one who devoted years of her life to caring for their mother. So she skipped the wedding.

Fish said that he would recommend that Barb and her brothers try to open lines of communication by explaining their concerns, and present a compelling warning: "There is an easy way and a hard way." Meanwhile, Barb and her husband have been wondering whether they should continue to make payments on their loan. They worry the brother could keep the money, when the loan should be offset by Barb's inheritance. Yet if they were to stop payments without consulting her brothers, they would risk becoming the target of a new round of suspicion and resentment.

The Family Fight provides a short, 137-page, guide to wills and estate planning in simple terms and includes several instructive anecdotes from Fish and Kotzer's law practice.

It's the sort of book Fish wishes he himself could have handed to his late father when he came to seek advice about a will.

"I had a lot of trouble initiating anything where there was an inheritance factor," he admits. "It was embarrassing. This (book) breaks the ice in a way the parent can understand."

Kotzer, the more promotional member of the partnership, has a standing offer that he will review a person's will and power of attorney documents free of charge to see whether they contain any recipes for family war.

He also offers Money Talk readers who order one of their self-published books a free CD of two superbly performed and emotion-charged songs — The Family Fight and Photos In A Draw — that he wrote in honour of his late mother.

The un lawyer-like songs have opened doors to numerous radio and television call-in shows across Canada and the United States in recent weeks, and prompted thousands of visits to his promotional website <http://www.familyfight.com>.