

CHAPTER 1

Legacy of a Lifetime

There are certain universal truths. Your life is unique. Yet at the same time, we all share many basic values: to love and be loved, to work hard, and give back, to be empathetic, and to be the best we can be. We're only human and we all make mistakes. We all laugh, we all cry, and we all die. We hope that our lives mattered, that we'll leave a mark and will be remembered for what made us special. How will you be remembered? As a kind soul, a dedicated parent, and a loving spouse? Perhaps your legacy will be defined by a lifetime of achievements, or maybe your loved ones will reminisce about your infectious laugh or loyal demeanor. Each journey is unique, but at the end of the day, we all hope to leave a meaningful legacy.

But there are certain universal truths. The loss of a loved one typically leaves the survivors in mourning. Sometimes family members grieve together and tearfully share in the legacy of the deceased and by so doing, their mourning is eased. But too often, that's not the case. Instead of pulling together, family members fractionalize, and the digs and darts begin. They become embroiled in bitterness, fingers are pointed, and blame is attributed. Lines are drawn and after heated exchanges, there's silence as the embers smolder. The survivors, now divided, believe they are morally correct in

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interpreting the intentions of a loved one and are therefore posthumously charged to right the obvious wrong. The loved one's legacy is marred by dispute and bitterness, and ultimately decided by a court of competent jurisdiction with a perceived winner and a perceived loser. But somewhere in the taking of the windmill, amid the salacious charges and endless delays, has slipped the aura of the body at rest.

Family disputes and contested estates are not unique to your family. Behind every front door are latent family tensions or children embarrassed by their troubled youth. The source of such emotions may be a parent's shortcomings, or a bitter divorce, or a stepparent asserting control. Some feel their childhood existence was overshadowed by their sibling's golden status, or ignored because the difficult child demanded their parents' attention. The resulting emotional wounds culminate in a note to self. I'll do better as a parent.

Thereafter, you start your own family and commit to doing just that. The effort may start by listening to Mozart while the fetus is in utero, and reading each and every Baby Einstein book to your exceptional toddler. It continues with attending every soccer game or back to school night, opening your doors to the neighborhood, and making over-the-top bar mitzvahs, or packing every conceivable item for summer camps. Before you know it, you're purchasing the safest new vehicle for your teen, and then searching for the perfect university for your young adult child. You wouldn't be criticized for not trying hard enough, but you may be criticized for trying too hard. But no amount of effort can change that which was.

Your parent suddenly passes, and your world stops. The golden child promptly assumes control, the difficult child objects, or the stepparent explains what your parent allegedly intended. The raw nerve is exposed and you're steaming mad. Frustrations rise as questions go unanswered. Old wills, unsigned wills, and unclear wills surface. Assets are missing, assets were gifted, assets were retitled, and more questions go unanswered. Ultimately you reach a tipping point, the moment when you know you've had enough. Your

patience has been exhausted and you're ready to stand up for the last wishes of the decedent. The fuse is lit, lawyers are hired, and complaints are filed.

The details of the family history are publicly docketed, yet the wounds are internalized. It's hard to talk about. The paparazzi may not be at your doorstep and the terms of the disputed will may not be chronicled in the tabloids or laughed about on TMZ. But make no mistake about it, the stress and the anxiety of a contested estate will keep you up at night as the acid indigestion burns like a five-alarm fire. You make one last call to the antagonist in hopes that reason will prevail, but instead your blood pressure boils as you listen to the same old irrational and tired diatribe. Baseless as it may be, it takes up part of your psyche and you really don't want to talk about it, and so, you carry this weight on your shoulders.

Conversely, the lives of those who have attained stardom are exposed for all to see, for all to envy or for all to condemn. Ask about the legacy of Brooke Astor, and you may hear of a 105-year-old beloved philanthropist left to sit in soiled clothes while her son, once respected, planned and plotted his way into her fortunes. The world would watch as he fell on his own sword while comforted in the arms of his Lady Macbeth. Or ask of the spirit of Jackie Onassis, and you will hear the story of grace, dignity, and style. Were the two icons so different? Jackie Onassis is remembered for who she was, and only a few know the details of her estate plan—an aura preserved. In stark contrast, Brooke Astor's legacy will be overshadowed by her final failing years and the conviction of her overreaching 85-year-old son.

Whether it's Brooke Astor, Michael Jackson, Jerry Garcia, Leona Helmsley, or Anna Nicole Smith, celebrity probate disputes fill both tabloids and court dockets. However, such dubious distinctions are not the exclusive property of those having achieved celebrity. Be assured that back on Oak Street, the future of the family business, the distribution of the family's wealth, and the snuffing out of family relations

are the sources of emotionally charged arguments staged at your neighbor's kitchen table, exaggerated by rumors and innuendo at a wedding reception or exchanged in a long string of harsh and accusatory e-mails, just waiting to be introduced into evidence. We must learn from our own experiences, from the woes of celebrities, from the movies we watch, from the books we read, and the lyrics we sing, hoping that we can shape our destiny, and build and protect our legacy.

Here's hoping that yours isn't debated in a court of law, but will be etched in the hearts and minds of those you love. But hoping is not enough. One day, a loved one will deliver your eulogy. Perhaps it'll be a tearful and at times funny description of your journey, your incredible work ethic, or good nature. In which pew sits the loved one who believes that the riches left behind are their birthright, and that those who weren't there, those who caused the aggravation, haven't such a right, or that a second spouse seeks only to legally establish such right. These perceptions, right or wrong, are the reality on which affidavits are filed and relationships extinguished.

Those seeking eternal peace must clearly express and document their intentions to ensure that the fruits of their labor pass to those deserving, to those needing, to those respectful, and to those loving, at the correct time and in the manner that will best forward the lives of their loved ones and preserve their legacy. If, however, you become subject to the acts of the antagonist and the matchstick has struck the flint, then understanding the nuances of undue influence, fraud, breach of fiduciary responsibility, and lack of capacity may become the requisite tools for this firefight.

Is the pen mightier than the sword? Can estate litigation be avoided, even in the most dysfunctional of families? Can the legacy of a lifetime survive allegations of incompetence, favoritism, or neglect? Yes, but with a caveat. Not every antagonist can be reasoned with, not every lemon turned into lemonade. Anticipating such a reality allows you to plan accordingly, to plan with specificity and to plan holistically.

But know that estate and business succession planning requires effort, resources, and persistence. Is such an undertaking worthy of your time and attention? Resting in the balance is your survivors' peace of mind and your legacy.

Whether you're a soldier fighting for our great country, or spent a lifetime stressing in an office hoping to protect your employer and your job, or have perhaps endured the roller coaster ride of building a family business, or are immersed in the most difficult job of all, raising children and tending to a needy family, your legacy is a work in progress. You hope that your blood, sweat, and tears are not for naught, but served a greater purpose—that your legacy will live on and in some small way help guide and provide for those you love. That same legacy, if neglected, if ambiguous, or if undermined can quickly vaporize amid pleadings and plottings.

Legacy Lesson #1: The Estate Planning Effect

Your life story could be a book. Your estate plan can be effective only if the planner understands and appreciates what keeps you up at night, what makes you tick, the nuances of your family structure, the needs of your heirs, and your goals. To that end, you must be able to develop a rapport with your planner, to talk frankly about family conflicts, struggles, jealousies, special needs, or special situations as a condition precedent to effective estate planning. Understanding the family dynamic, your goals, asset base, and titling of assets is a terrific start. Documenting your wishes in a will, health care proxy, power of attorney, and, if appropriate, trusts, is surely progress. So, too, is creating a business succession plan that transfers the value of the business to the next generation in a tax efficient manner. But life is not stagnant. Changes in the law, your wealth, your health, your intentions, or your family structure will require your plan to be periodically reviewed by a team of advisors you assemble, who embrace your priorities on an ongoing basis. Maintaining the plan's integrity, keeping it current,

and considering the good advice of your trusted advisors is the key often misplaced.

You spend a lifetime building your reputation, your asset base, and your legacy. Your estate plan should be a natural extension of your life by providing appropriately for those you love and for causes near and dear to you, and to be executed by those you deem most capable. The absence of a properly implemented estate plan is a prescription for chaos, bitterness, and dispute. Your wealth may fund a battle . . . or a grandchild's education.

Legacy Lesson #2: Passing the Torch without Getting Burned

A well-designed business succession plan will: appoint a successor leadership team, structure gifts or sales of business interests to the next generation, preserve your income stream, and establish the children's post-transfer income stream to meet their needs and obligations, all while maximizing income, estate, and gift tax efficiencies and promoting family harmony. A tall order indeed, but a task that once completed protects and preserves your life's work.

Once the need for a business succession plan has been established and your needs assessed, a detailed proposal letter with an understandable flowchart should be circulated to you and your accountant, life insurance professional, financial planner, attorney, banker, and other trusted advisors, and, if appropriate, shared with your heirs. A vetting of the plan can be an enlightening experience, one that sometimes reopens wounds and sometimes heals wounds.

Typically, business succession planning requires a valuation of an existing entity and the execution of a buy-sell agreement that will govern that entity. Sometimes the legal structure of the business merits the creation of new entities such as a limited liability company or a family limited partnership that may serve as the springboard for planned sales or gifts of all, or a portion of, the underlying business interest. Passing value to

loved ones is one thing, passing control is quite another. To strike that delicate balance you must protect the golden goose first, then divide the eggs equally. Nominating the successor manager should be a decision based on what is in the best interests of the business, and thereafter, the benefits of ownership may be apportioned equitably.

After a thorough analysis of all planning options, then a commitment to a detailed blueprint, followed by execution of documents edited for your needs, you can take comfort that you've done your level best. Selling or gifting your prized possession is an emotional act and hopefully your children will appreciate the significance of the moment, embrace the process, and respect the responsibility of preserving the burning torch for the next generation. Such is the American dream.

Not until it was too late did King Lear realize his plan for bequeathing England's riches to only two of his three daughters was ill-conceived. Not until it was too late did Esau regret selling his birthright to his brother Jacob for a cup of hot soup. Themes of hasty decisions and ill-conceived gifts make for a fascinating read, but in our journey, such themes cause agita and families to fall apart.

Legacy Lesson #3: The Holistic Approach

Some buy life insurance from an insurance agent, then talk to their accountant about their tax returns or ask their lawyer to prepare wills, and periodically converse with their financial planner, while others simply address such needs on the Internet. The problem is that without communication among the professionals, there's no integration of these disciplines, no master plan, and no melding of ideas and opinions. In order to best ensure that your estate and business succession plan are properly implemented, you should have all of your advisors working together, acknowledging and respecting each other's roles, and assuming a certain degree of responsibility to assure the successful implementation of your plan. If there's a weak link on

the team, rearrange the players. Team meetings should be periodic, with an agenda circulated in advance and notes of the meeting subsequently forwarded to all involved with an action list. Coordination of experts on the team and periodic reviews go a long way to assuring that your intentions are followed. The absence of a functioning team is the allowance of a dysfunctional team and a predictable result.

Legacy Lesson #4: Dropping the Gauntlet

Where there's smoke there's fire, and it generally does not take long after one's demise for the smolder to burst into flames. It may start with a disagreement over the planning of the funeral service, the location of the burial, open casket or closed, the wording of the obituary, or a missing goblet, but make no mistake, such disagreements stand as a beacon of things to come. Expect thereafter a newly inked will, a surprise codicil, or an outdated will being offered for probate. Sometimes the issue isn't the will at all, but rather a beneficiary designation form that was changed shortly before death, or odd financial transactions recharacterized as "gifts" by the recipient. Allegations of promises made and promises broken are often lodged as a new lawyer enters the scene, and family members scramble to fight fire with fire. A caveat blocking the will from being admitted into probate may be filed, and the appropriate response, an order to show cause seeking to vacate the caveat then docketed. A life's journey . . . subject to a discovery schedule, expert reports, motion practice, briefs, mediation, and a trial, all seeking to find the truth that now lies buried—a treasure never to be found but instead judicially constructed.