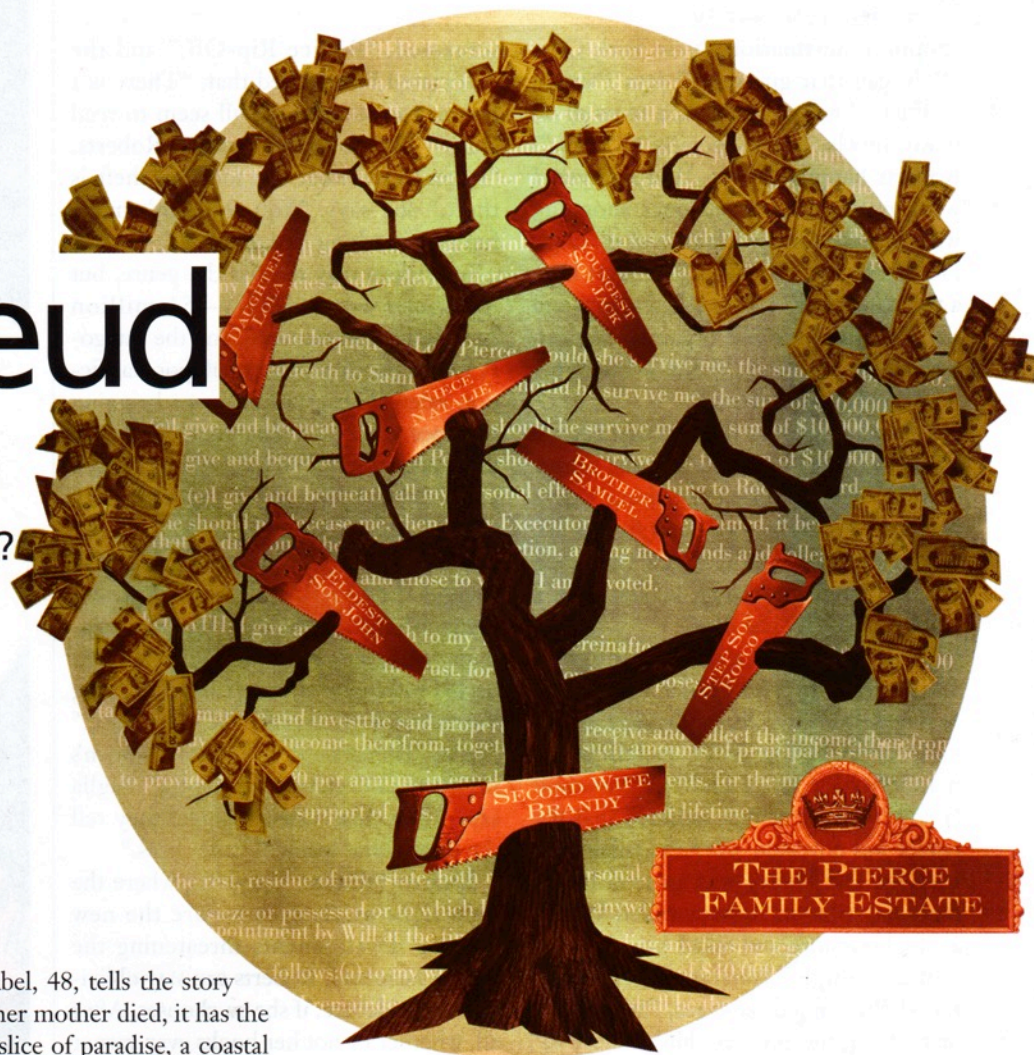


family feud

Why does the reading of a parent's will turn intelligent grown-ups into squabbling siblings? With the biggest transfer of wealth in history headed our way, we need to know
By Sarah Mahoney



When Olivia Boyce-Abel, 48, tells the story of what happened to her family after her mother died, it has the elements of a fairy tale. It starts in a slice of paradise, a coastal farm in South Carolina with an unspoiled shoreline and trees draped in Spanish moss, where Olivia and her brother and two sisters spent blissful childhood vacations with aunts, uncles, cousins and grandparents. As her mother grew older, and later sick with cancer, she worried about the legacy she would leave. The value of her share of the vacation property—part of a \$30 million estate pieced together by Olivia's grandfather for just \$2,000—had risen to \$10 million; she knew how difficult it would be for her children to come up with \$5.5 million in inheritance taxes on her mother's portion of the estate. So to preserve the land and keep it in the family, she created a foundation, tapping Olivia, who had taught land conservation at U.C. Santa Cruz, to be a trustee, and named Olivia and another daughter as coexecutors of her will.

Here's where the fairy tale turns into a horror story: Olivia's mother didn't tell her son, who, as the oldest child and a successful businessman, expected to be chosen as executor. "It would have been so much better if my mother had sat us all down and explained it," Olivia says. "But by that time, she was very sick. And like a lot of Southern women, she didn't want confrontations." Olivia, who felt uneasy about the arrangements, didn't talk to her brother, either. "I just didn't feel it was

my place," she says. When their mother died, Olivia's brother and one sister sued, hoping to prove that Olivia and her co-executor had exerted "undue influence" over their mother.

The battle that ensued took several years and cost the trust, estate and the four siblings \$3 million in legal fees. The eventual settlement—reached after a jury trial had begun—broke up the family compound, with a land donation to a local college foundation for marine science and research, and the remaining property split among the family members. But by then, the once close-knit family had unraveled. For years, Olivia says,

Many boomers are banking on inheritance to pay for retirement or put their kids through college.

conversations with her brother were curt and businesslike—if they spoke at all. Finally, they're talking again. "We're working on healing this," says Boyce-Abel, who lives in Santa Cruz, California. "But it's awkward. It's very strained. And that's sad, because before this all happened, we were so close. Now I don't even really know my brother's children."

The nightmare was so intense that it inspired her to become a certified mediator and launch Family Lands Consulting, which helps families address estate-planning issues. In hindsight, she

realizes, her own family imploded because of poor communication. "Death is our last taboo," she says. And raw grief makes even the sturdiest families volatile. "Psychologists say it takes two years to recover from losing someone," she adds. Yet in handling estates, siblings are forced to deal with complex legal and financial issues, often before all the neighbors' comfort casseroles have been eaten. And once the first phone call to a lawyer has been made, "litigation just takes on a life of its own."

It's little questions—who gets the wedding ring or the tea set—that can trigger World War Three.

Disputes that begin about money or possessions can quickly take on all the competitive undertones the siblings grew up with. Echoes of childhood accusations ("No fair." "You're not the boss of me." "Dad always liked you best.") move from the kitchen table to the courtroom. And once it's begun, siblings are often willing to spend everything they would have inherited—sometimes more—to win this last, biggest, family fight. "It's never about the money," says Boyce-Abel. "It's about love. No matter what we say, most of us equate money with love. If people don't feel they were loved sufficiently, the family dynamics can become very complicated, very fast."

The fact is, with America on the verge of the biggest intergenerational transfer of wealth ever—an estimated \$7.2 trillion—more and more baby boomers are putting an estate lawyer on speed-dial. Add in the fact that many big-spending boomers have been banking on that money to finance their own retirement and put the kids through college, and tension can mount, tempers explode, when a will is read and the amount or the distribution of the funds isn't what the heir was counting on.

For the typical American family, the biggest asset is the parents' home, which is usually left in equal shares to all the children. Most heirs choose to sell, splitting the cash. When it comes to family treasures, from valuable jewelry and antiques to

beloved family photographs and bric-a-brac, "there are almost always some disagreements," says Colleen Sinclair Prosser, an estate-planning attorney with Sinclair Prosser in Annapolis, Maryland. "It's just that in healthy families, they are able to work the disagreements out." Which family will erupt into Ibsen-like drama? The ones who don't have an ongoing relationship that can serve as a foundation for working out compromises, says Steve Hartnett, an attorney and associate director of education at the American Academy of Estate Planning Attorneys in San Diego, California. "Often, the only thing the siblings talk about is the parents—every phone call is about, 'How is Mom?' Or siblings don't talk at all; they call their parents every few weeks, and Mom or Dad fills them in on

what the others are up to. So when the parent dies, the family's entire structure is gone. And siblings just don't know how to sort it through on their own."

"When things go wrong, they go very, very wrong," says Natalie P. Garth, an estate-planning lawyer at Ridenour, Hinton, Harper & Kelhoffer in Phoenix, Arizona, who estimates that of the estates she settles, about 5 percent erupt into bitter sibling warfare. "Death either brings out the best in people, or the worst." Rancor grows so that families that were once close can't even sit in the same room together. Most parents try to be even-handed, she says, and most children really want to do the right thing. But even the little questions—who gets the wedding ring or the tea set—can trigger World War Three.

What sets it off? Almost anything. There may be no will (some 53 percent of Americans don't have one, reports a 2002 study for *findlaw.com*) and children disagree about who gets what. If a will exists, an heir may challenge its validity, charging that the parent was not competent or that another heir exerted undue influence. One sibling may claim that money lent to a brother or sister on a handshake should be deducted from his or her portion; that child may argue that the debt had been forgiven. A disgruntled spouse may (continued on page 84)

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1. SPELL THINGS OUT. Ask your parents to figure out who gets what, right down to the Christmas-tree lights. Some people put stickers with names on the bottoms, others leave a list. Just as important, make sure your parents let everyone know—if Mom really liked you better and leaves you all the Waterford, wouldn't you like your sister to be mad at her, not you?

2. RESIST THE TEMPTATION TO AVOID THE MORE

DEPRESSING DETAILS. Big fights can erupt when planning the funeral—remember the brouhaha when Ted Williams died?—and spill over to estate issues. So ask your parents what kind of service they want, whether they want to be cremated or buried.

3. DON'T HESITATE, MEDIATE. If you sense battle lines being drawn, mediation and arbitration can provide a lower-cost alternative to taking each other to court. In mediation, a neutral third party helps all sides reach an agreement. Usually, mediation isn't binding. In arbitration, a neutral third party listens to both sides then comes up with an agreement; usually, it is binding. (The specifics of both mediation and

arbitration are governed by state law and the Federal Arbitration Act.) Often, a judge will order warring siblings into mediation, and many wills contain a clause stipulating arbitration—say, if parents' personal effects cannot be divided by the children within 30 days. Fees for either mediation or arbitration in general are significantly lower than what you'd pay lawyers in a lawsuit. To find a mediator, log on to www.adr.martindale.com, legal publisher Martindale-Hubbell's Web site.

4. DRAFT A WILL WITH THE PERSONAL TOUCH. A heartfelt letter attached to a will can soothe the anger of grief-stricken children. In Illinois attorney Jim Nash's

favorite, a man gave his children and grandchildren a reading list of his favorite books. The University of Minnesota's Marlene Sturm knows of a case where the matriarch called her adult children around her, and started holding up objects, explaining each one's history, then asking who wanted it. For more ideas, check out www.yellowpiewplate.umn.edu.

5. MAKE AN END RUN AROUND STUBBORN PARENTS.

If they refuse to talk about their plans, start paving the way for clear channels of communication with your siblings now. Hard as it can be, the initial "Have Mom and Dad ever talked to you about what they want to happen to

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their stuff when they die?" conversation is even more critical for siblings who don't get along well.

6. ONCE YOU BEGIN SETTLING THE ESTATE, TALK FACE-TO-FACE.

Nash is a big fan of Kinko's videoconferencing for far-flung siblings. If everyone is in the loop, it's harder to escalate to those tense "You threw the birdhouse I built in eighth grade in the trash" exchanges. Above all, advises mediator Olivia Boyce-Abel, be cautious with e-mail. "Something that sounds fine to you when you write it at midnight can come across very differently when your brother gets home from a hard day at the office."

7. VOW THAT THIS IS ONE MORE TIME YOU WON'T BE LIKE YOUR MOTHER.

Call your lawyer and make sure your own will is current, and that your heirs know what is—and isn't—coming to them.

tique watch or fireplace andirons that started the fight. Jim Nash, a partner in Nash, Nash, Bean & Ford in Moline, Illinois, once watched four siblings spend about \$2,500 and seven months, each bitterly—and most likely, truthfully—claiming that Mom had promised them the silver. At most, it was worth a few hundred dollars.

A parent's second marriage tops the list of volatile situations, estate lawyers say. Joanne A. Gerow, the 49-year-old owner of a tax preparation and book-keeping business who lives in Reno, Nevada, knew that her dad intended to protect her and her younger sister, now 46. "Shortly before he died, he told me he was putting two rental houses he owned in trust for us. Although he planned to leave enough to take care of Sylvia—his second wife—he wanted us to be taken care of, too." But he never completed the property transfers. When he died suddenly, these loose ends enabled Sylvia ("She and I had a hate/hate relationship from the beginning," Gerow says. "I always thought she was a gold digger.") to take control of the trust.

But, to Gerow's mind, that wasn't the worst of it. "My dad and I rebuilt race-car engines, and I had an engine hoist and other equipment in his garage. It was worth thousands. Sylvia sold it all in a yard sale—and never even let us know."

whisper into someone's ear: "See, your brothers and sisters are trying to screw you, just the way your dad always did." If parents were ill, there may be festering resentment from the daughter who drove them to every doctor's appointment, or guilt from the far-off siblings who just swooped in every other Christmas. Second spouses and stepchildren may challenge the "natural" heirs, exposing hard feelings that have been bubbling under the surface for decades. Any one of the many minor decisions an executor makes can be challenged by another sibling: "How could you have sold the dining-room table at a yard sale without even having it appraised?" And fights often arise over the money that must be spent distributing an estate—commissions to real estate agents, the executor's compensation, legal fees.

Suits and countersuits can go on for years, with legal fees exceeding the value of the antique

Guilt—and guilt tripping—about caring for a sick parent can also derail an estate plan. In fact, adult siblings fight more about caring for aging parents than any other issue, according to a survey Francine Klagsbrun did for her book, *Mixed Feelings: Love, Hate, Rivalry, and Reconciliation Among Brothers and Sisters* (Bantam Books, 1992). Two sisters in Maryland, both in their mid-forties, faced each other down in Colleen Sinclair Prosser's Annapolis office one day last year over the inheritance of a suburban home worth \$200,000. One sister had lived in the house with her mother, caring for her when she got sick. Prosser told them that their mother had left the house to them in equal shares. "Why should you get anything?" the caregiver angrily asked her younger sister. "Mom bailed you out of two bad marriages, and helped you raise your child." Prosser was stunned when the younger sister meekly agreed. "I think part of it was just bullying on the part of the older sister, part of it was guilt that she hadn't been there more for her mother."

Money can cause problems, but nothing brings out the fangs faster than the sorting of personal effects. "People fight over memories," says Les Kotzer, a Toronto-based attorney and co-author of *The Family Fight: Planning to Avoid It* (Continental Publications, 2002).

These cases can seem so crazy they're almost comical. An elderly Arizona couple left some property worth just over \$1 million to their three children, all in their fifties. "They disagreed about just about everything," says Garth. But the biggest dispute concerned family pictures. At the outset, the lawyers suggested copying the photographs for each child. The children refused. Instead, over three years they spent an estimated \$250,000 in legal fees. The judge's final decision? Copy the photographs. "The case made me a lot of money," Garth says, "but it was a ridiculous waste of everyone's time."

"There are powerful messages in who gets which things," says Marlene S. Stum, Ph.D., associate professor of family social science at the University of Minnesota in St. Paul. In fact, the lack

Four siblings spent \$2,500 in a bitter seven-month battle over the family silver, worth a few hundred dollars.

of research on the way families handle personal property after a death led her to launch the "Who Gets Grandma's Yellow Pie Plate?" resource to help families decide how to distribute personal items in an estate. Her research did turn up horror stories, but it also helped put the big, noisy fights into perspective, by uncovering many families who handled things just fine. "I am amazed at all the creative ways that people try to be fair—maybe they'll hand out colored marbles or use play money in mock auctions. Many families may not know what Mom or Dad wanted, but they do know they want to keep talking to each other." ■

Sarah Mahoney writes for *Yankee*, *Reader's Digest* and other magazines.