

LAW REVIEW

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BROACHING ESTATE PLANNING WITH YOUR PARENTS

A strange thing has happened in recent years. Many of my friends are having “situations” with their parents. It must be an age thing. I wouldn’t know.

As we get older our parents do too. Interesting how that works. It’s very frightening to see parents “lose it.” My Mom reads the *Law Review* (as a Mom should) so let me be perfectly clear, she is as lucid as ever - and in good health. She also has her financial affairs in order. Right.

Several friends aren't so lucky. Their parents have health issues, sometimes prolonged illnesses, even severe loss of memory and the beginning stages of Alzheimer’s.

Parents don’t like to talk about their health, death, or their financial situation, and would never think of talking about their estate plan. “It’s none of your business.”

But it is our business.

We can’t assume that “everything is taken care of.” From my observation, more often than not, nothing is taken care of. The will, if there is one, is old and irrelevant, insurance is inadequate or lapsed, no steps have been

taken to address health problems, from something as basic as stairs in the house that soon can't be navigated to a long-term (expensive) debilitating illness.

Parents and kids are afraid to broach how the parents will be cared for and whether their financial affairs are in order. While it isn't easy, it must be done.

The father of a good friend of mine who was in the insurance business recently died without insurance and his wife was forced to sell the family home. If you think you and your brothers and sisters aren't on perfect terms now, wait until Mom and Dad die without a will or with an obsolete will, or without an *inter vivos* trust that could help save burdensome estate taxes.

Here are some suggestions for beginning that conversation with your mother and/or father:

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FOR BEGINNING THAT CONVERSATION
WITH YOUR MOTHER AND/OR FATHER.

“So Dad, you sure look handsome today. Hey, have you ever thought about your mortality? We all die, so let's talk about your will. Where there's a will, there's a way and I am your favorite, right? I mean, as the oldest child, you believe in primogeniture I hope.” Not. Try something like:

“Mom, I bet with the severe decline in the market, like me you've really taken a hit. I wonder if it's time to reassess your portfolio.” Or try:

“Mom, you know I was reading the other day, on average, families pay (pick a number) 40% more in death taxes when they don’t plan their estates. Wills lose their effectiveness as we age.” Or:

“Hey Pops, have you ever heard of an inter vivos trust where you and Mom are able to put your property in a trust for the kids, which you control and keep the money from, and it helps reduce or in some cases avoids estate taxes? Maybe we should check it out.” Maybe:

“Mom, did you know that under the new changes in estate tax laws, fewer people owe estate taxes. Maybe we should look into it.”

In my family while my Mom did not want to get into a family discussion about her finances, insurance and estate planning, she was more than willing to let us kids talk to her financial advisor and insurance agent.

There’s no simple way to approach your parents about their financial affairs. It’s a touchy topic.

Interestingly, my mother and father-in-law would never discuss their finances with my wife nor her brothers, but when I asked, as the son-in-law lawyer, they laid it out. It was the beginning of an unfortunate discovery. The fact that my in-laws will was over 20 years old was the first sign of a problem. Wills should be reviewed periodically. Much work had to be done to move properties around and take steps to avoid taxes and become eligible for Medicaid. Whether we took steps in time to avoid the 36 month look-back period for Medicaid (Medi-Cal in California) remains to be seen.

Who in the family is best suited to raise the subject with your parents, and which parent is most likely to be receptive? Maybe all the kids should join in the discussion. Or the family lawyer could help.

Appeal to what would appeal to them: saving taxes, avoiding probate, preventing a sale of the family home, loss of retirement investments in a rapidly declining market (bingo!), protecting the kids, providing for (or protecting from) a spouse or preventing an ugly family dispute.

In coming weeks we will explore questions to ask your parents, estate planning tools, and charitable giving. Four more articles coming up.

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