

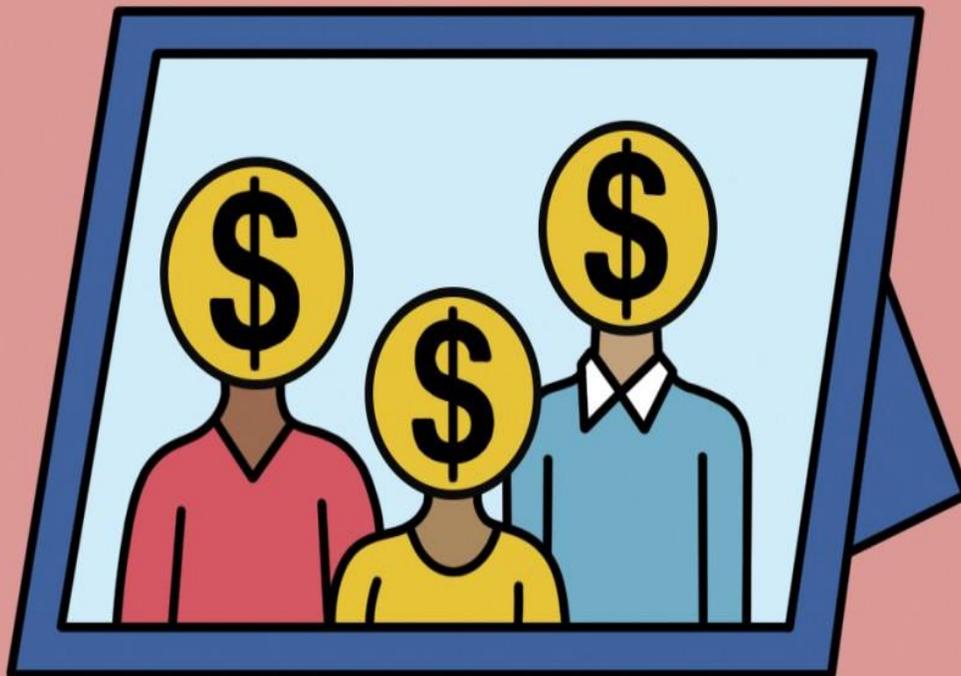
MoneySense

How to write a will that's actually fair

Who gets what is more complicated than many of us realize



by [Jonathan Chevreau](#)
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(Illustration by Sam Island)

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Dividing assets fairly among loved ones may seem simple in theory but in practice, the attempt to introduce equality in wills and inheritances is fraught with cross currents that can tear families apart.

In his book *The Wills Lawyers*, Les Kotzer of Thornhill, Ont.-based Fish & Associates describes an 80-year-old widower named Cedric, who has two grown children. His will leaves everything equally to son Colby and daughter Frederica.

A happy ending? Hardly. Over the years, Colby had “itemized” every financial gift Cedric ever gave Frederica, including vacations, nannies for her kids and private school tuition. Childless Colby didn’t travel much so, in a showdown near the end of his father’s life, he demanded an extra \$100,000 from Cedric’s will to restore equality, or \$80,000 up front. The alternative was “never see me again.”

Cedric chose option three, cutting Colby out of the will. It’s a harsh example, Kotzer says, but illustrates that even if a will appears “fair and equal,” it can be torpedoed by a lifetime of giving.

Steps to parity

Add up all the assets in your name, subtract what’s owed, including tax, to calculate what’s available for distribution under your will, says Sandra Foster, author of the 6th edition of *You Can’t Take It With You*.

After taking inventory, pay special attention to how title is held on each asset: solely or jointly, says consultant Sandy Cardy. This is a big issue because some family members try to hold joint accounts in a misguided attempt to bypass probate fees. Then decide how to distribute it.

You’ll need the help of a professional to write a will—without one you die intestate and government decides who splits your wealth—but **it’s a good idea** to know what you want beforehand. Cardy likes to look at intentions, stating who should receive what and how, then determining if an asset should be owned jointly, or if trusts should be set up. Certain assets, such as those registered with rights of survivorship, those that have a named beneficiary, or that are subject to a legal agreement (such as a trust), are distributed outside the will.

Next, name powers of attorney both for financial and personal care.

Then book appointments to talk to several specialists. A financial advisor helps eliminate communication barriers and gets the family talking, Cardy says. Consult an estate lawyer to draft wills or trust deeds with precise legal wording. Small business owners should consult corporate law specialists to create proper shareholder agreements.

You should also appoint executors or estate trustees to ensure they can settle the estate and handle the personalities of beneficiaries. Talk to guardians of any minors to ensure they will take responsibility until the children reach the age of majority.

Equality is hard work

“Assuming no estrangement with the children, it may be best to leave the residue of a will equally,” Cardy says. An unequal division because one child earns more than another may make the other feel emotionally less loved by the parents and leave a bitter legacy like Cedric’s.

But equality may not work for assets like a business or cottage. In will reviews, Kotzer looks for “flashpoint items” like a cottage or condo. **“I can smell a fight coming.” Families should** meet before the will is drawn up. When flashpoint issues arise, try neutral solutions like flipping a coin or drawing names from a hat. Likewise, if two kids work in the family business and a third does not, it **won’t make sense to divide shares equally.** Instead, consider gifting a life insurance policy to the third, to help avoid inadvertent inequality.

It bears repeating that fair doesn’t always mean equal. Even if you think you have divided assets equally, they may not be after tax. Cardy cites a \$500,000 residue left to one child and a \$500,000 RRSP with another child named beneficiary. The tax on the RRSP is borne by the estate so the other child **could end up with \$500,000 minus the tax. “Equal is an equal amount of money after tax,”** agrees Foster.

Fair and equal becomes even more complex after remarriage, when there are children from a prior relationship alive on the death of the second partner. While it can make sense to make your current partner your first priority **followed by the kids, it can backfire. “Fair might need to consider not just how much but also when the children receive their inheritance.”**

For blended families, wealthier families, families with business assets or multiple properties, a three-generation family meeting is recommended. Tom Deans, author of *Willing Wisdom and Every Family’s Business*, recently launched a digital resource financial advisors can share with clients.

The Willing Wisdom Index assesses how prepared such families are to inherit. A family meeting of immediate blood relatives is facilitated by a financial advisor, accountant or lawyer, or a professional meeting facilitator. Such meetings may last half a day and can be held annually. The agenda systematically covers taxes, wills, property and business, division of personal assets, selection of executors, powers of attorney, long-term care and philanthropy, plus investment returns.

Too late for the Cedrics of the world perhaps, but with the right planning it’s not too late for you.

Jonathan Chevreau is founder of the Financial Independence Hub and co-author of Victory Lap Retirement.