

Should You Treat Your Kids Equally in Your Will? 12 Financial Planners Weigh In

By the editors of Kiplinger's Personal Finance | October 2, 2018



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"I always knew Mom and Dad loved you best." That's not what parents want to hear ... but it's what a lot of kids feel, even though their parents swear that they love their children equally.

When parents sit down to write their wills, that is the issue they must face head on. So, how do they do the right thing, keep the peace and not play favorites? **Should they even try?**

In deciding how to split your assets among your children, should you dole them out in equal shares to be fair, or is it OK to give one child more than the others? We asked financial planners to share stories gleaned from their years of experience. **Some of their stories end in disaster,**

while others offer the reassurance of a clear path to follow. Read on to see how these stories might apply to your own family's estate plan.

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Mike Piershale: Emotionally Charged Issue Can Be Boiled Down into 1 Simple Sentence



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I advise all my clients **to love their children equally and as such treat them *uniquely***. In other words, consider each child's unique situation and come to an intentional decision about what and how much to give them.

I was working with an elderly widower with three adult daughters. Two of them were doing quite well financially, while the third had always struggled. Also, this third adult child acted in the role of a caregiver for her dad, living in the home with him the last 10 years of his life.

While the dad left equal amounts of money to the three daughters, he decided to leave his modest home and his automobile to the daughter who was struggling financially and providing caregiving for him. **All three of the kids were on board with their dad's decision** and felt like leaving extra to this third daughter was the right thing to do.

In my mind this is a good illustration of loving your kids equally but treating them uniquely, which means NOT always dividing your estate equally between them.

— **Mike Piershale, ChFC**, *president of **Piershale Financial Group** in Barrington, Illinois. He works directly with clients on retirement and estate planning, portfolio management and insurance needs.*

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Jeffrey M. Verdon: A Cautionary Tale: Be a Careful Judge of Skill and Character



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A wonderful woman with four children opened a bagel shop in the early 1980s and built it into a very successful business. We will call her “Shirley” for purposes of this story.

Shirley worked seven days a week for years to build the business. When she finally had financial success, instead of spending on herself, she spent it on her children and grandchildren. She employed some of her children in the company while owning 100% of the business. To say she was a generous woman was an understatement.

At a relatively young age, she became sick and passed away a year or so later. Her estate plan, prepared by a very reputable law firm, left the majority of the company to the one family member least qualified to manage the business. Why? Well, Shirley had wanted to guarantee her youngest child a job in the business and left her the majority interest in the business as her way ensuring this outcome.

The siblings fought over the business, accusing each other and saying that the others would be the ruin of it. **As you might guess, the business failed and was sold for scrap.** The children lost a multimillion-dollar asset, and the legacy that their mother built with her blood, sweat and tears was no more.

Our advice to families is that before deciding who gets what, perform or have performed a candid assessment of the maturity and skills of the intended beneficiaries and avoid the perils that befell Shirley and her legacy.

— **Jeffrey M. Verdon, Esq.**, *managing partner of the **Jeffrey M. Verdon Law Group, LLP**, a Trusts & Estates boutique law firm located in Newport Beach, Calif. With more than 30 years of experience, the law firm serves affluent families and successful business owners in solving their most complex estate tax, income tax and asset protection issues.*

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Marguerita M. Cheng: Do This, Not That



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When considering your own estate plan, take in consideration these two stories, which boil down the issues nicely.

An equal, but flawed, plan. One of my friend's friends left a lot of wealth to his two daughters. He left the same amount, but they have different lifestyles. One lives very modestly and probably really doesn't need to work, but does. The other one doesn't work, but lives more lavishly and probably should.

While the estate plan was equal, was it fair? You be the judge, but it brings to mind a famous line derived from Warren Buffett's school of thought: ***You give your children enough money to do something, but not enough to do nothing.***

Unequal, but harmonious. A couple I've worked with are blessed with two healthy Social Security benefits, three sources of pension income and retirement assets. They live modestly and have three adult children and seven grandchildren.

Instead of waiting until they're gone to pass their assets down, they decided to help their grandchildren with their education now. Their adult children work, but they have experienced job loss and divorce, so the help is welcome. One granddaughter's situation is more vulnerable because she has only one set of grandparents (them). They have made provisions to help her more. This doesn't cause resentment because they've been open about it, and communication is key.

This couple is doing everything right. They've planned ahead, taking their family's needs in consideration in a fair way.

— **Marguerita M. Cheng, CFP**, is CEO at **Blue Ocean Global Wealth**. She is a Chartered Retirement Planning CounselorSM, Retirement Income Certified Professional and a Certified Divorce Financial Analyst who helps educate the public, policymakers and media about the benefits of competent, ethical financial planning.

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Daniel A. Timins: An Extreme Estate Plan with a Stunning Outcome



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I believe you do not need to treat children equally in your estate plan, even if they are equally responsible, equally financially empowered and on good terms with you and one another. Some parents follow differing distributive patterns under Sharia Law or other cultural edicts. Others leave disparate amounts to children if one has several children of their own and the other child does not. In the end, the decision of how to bequeath one's money belongs to the client.

I had one couple who decided to almost completely disinherit their daughter. She had been an opioid addict for several years, and they felt leaving her substantial money (even if utilizing a trust with a substance abuse provision) would not encourage her to sober up while she was still young. So, the parents opted to leave almost all of their estate directly to their son, who would decide in the future how to distribute any of his inheritance to the daughter based solely on his discretion.

You have to understand what this means: The couple's son was going to legally receive almost all of their money, and he could choose to give his sister none of it. I cautioned them of this possible outcome (it happens), but they were sure this was the best course of action, so we moved forward. We did opt, however, to create documents that can be changed in the future.

I suggested that they not rely on their wills to create this distribution: Wills are public information during the probate process. They typically require all children to consent to the validity of the will (and the daughter clearly would contest the will), so we created living trusts that would avoid court

oversight and place the burden of proof of invalidating the document on the daughter.

I took copious notes detailing why her parents were almost entirely disinheriting her, and also asked her parents to write letters to her (left in my legal file) explaining their intentions, so that the notes could be entered into evidence if there is a future trial. Lastly, I instructed the parents to tell her she was going to receive very little of their estate: If their purpose was to get their daughter clean sooner rather than later, she had to be given the incentive now rather than finding out once they passed away.

I am glad to say this approach has thus-far worked: The clients' daughter has been sober for two years, and we are considering modifying the couple's estate plan in a few months.

— **Daniel A. Timins**, *an estate planning and elder law attorney and a certified financial planner, helping clients with wills, probate, living needs and Medicaid planning.*

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Katherine Dean: Communication Is the Key



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My advice: Treat each of your children according to their needs, **but be prepared to communicate the *why* behind your choices during your lifetime.** The communication piece is critical. Otherwise, you risk a “surprise” at your death, leaving your beneficiaries with the room to misinterpret ***why*** you made the choices you did. This can end in hurt feelings and fractured relationships, which is never a desired outcome.

I’ll never forget a couple who approached me once after I had completed a speaking event that touched on this very topic. They rushed up to the stage as soon as we concluded, bursting with questions, such as: “How do we determine what is fair and what is equal for our children? How do we talk to them about this? What do we say? What if they think otherwise?”

As they shared more of their specific circumstances, I learned that they had three adult children, one of whom had special needs. My advice to them was to start by determining what lump sum would be needed to provide an income stream to the special needs child for their lifetime.

Once they knew what dollar amount that needed, they could look at the remainder of their estate to determine what an overall distribution plan could look like across all three of their children.

Providing them with this basic first step instantly brought them comfort. We then talked about how their decisions could be communicated to their children and how they would need to create a safe space for a family discussion and questions on the topic.

The end result was very positive. They solved for their goals, they communicated why they wanted to make an unequal, yet fair, distribution with their estate, and they had a great discussion with their family about it. Their children completely understood and supported their choices. It certainly goes to show how powerful communication can be.

— **Katherine Dean**, the head of Family Dynamics for **Wells Fargo Private Bank**. Dean leads the ongoing evolution of the Family Dynamics program curriculum as well as the management of the Family Dynamics team, which helps families sustain their wealth across generations, by facilitating decision-making.

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Lisa Brown: Consider Age First, Unique Characteristics Next



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How you treat your children in your estate plan may depend on their age. **If your children are under age 18, in most cases the answer is yes,** you should treat them evenly in your estate plan. Up to this point in their lives you've probably spent about the same to raise each of your children, and there may not be other life factors that argue to leaving them anything different upon your death.

However, once you have a child who is over age 18, things get more complicated. If you have a child whose college education is paid for, but one still in high school, you may want to create a single "pot trust." For example, all of your children's inheritance is initially left in one trust account and is not divided up into equal shares until after the last child graduates from college. This strategy ensures that the younger child is not spending down their inheritance to pay for their education, whereas the older child's college education has already been paid for.

Next, **if one of your children is a spendthrift, you may want to leave their inheritance in a trust** vs. giving it to them outright. I had a client who left two of his three children's inheritances in trust because they were younger and less mature financially. On the other hand, the eldest child was given his share outright.

Finally, take into consideration the type of assets a child will inherit. For example, if one child loves the family beach house and the other prefers the mountains, leaving more cash to the child who doesn't want the beach house is just fine. I have a client who owns three pieces of real estate and

is leaving the beach house to his son who loves to vacation there. At his death, he will leave the appraised value of the beach house in cash to his other son (who will sell the other two homes and take his share out of that cash).

— **Lisa Brown**, a partner and wealth adviser at **Brightworth**, an Atlanta wealth management firm with \$3 billion in assets under management, serving over 1,200 families in 48 states. She works with high net worth families in investment management, executive compensation, retirement transition and estate planning. Brown is a Certified Financial Planner™ and an Accredited Estate Planner.

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Timothy Barrett: A Clear Case for Inequality



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When parents provide continuous and substantial financial aid to some children, but not all, do they create a fiduciary responsibility to those dependent children that they should respect in their estate plan? Is that fair to their self-reliant siblings? **I believe that *equal* doesn't always mean**

fair.

A couple I've worked with, let's call them Jesse and Lori David, have three grown children. Their married daughters appear solvent, but their son, Jeff, began suffering severe seizures about age 19 that quickly led to total debilitation and institutionalization. Jeff, now about 60 years old, is severely cognitively impaired and unable to operate his wheelchair. His parents agreed to leave half their estate to Jeff's institution, which has been his home for 40 years, as consideration for Jeff's guaranteed residency for life. The other half will fund a supplemental needs trust for Jeff, with his sisters dividing the trust at Jeff's death.

The Davids struggled with this decision to exclude their daughters. But they had all been discussing for years just what to do. Ultimately, they all decided that this plan would sustain Jeff, free his sisters of financial concerns for him, and would likely benefit one or both sisters eventually.

That example, of course, is at one end of a spectrum of possibilities. But what if Jeff's condition was self-imposed through substance abuse, or if his needs were less substantial? That muddies the line a bit. Just where dependency and an assumed duty begin is a matter of conscience. Where it ends is a matter of opinion.

— **Timothy Barrett**, a partner and wealth adviser at **Argent Trust Company**. Timothy is a graduate of the Louis D. Brandeis School of Law, 2016 Bingham Fellow, a Board Member of the Metro Louisville Estate Planning Council, and is a Member of the Louisville, Kentucky and Indiana Bar Associations, and the University of Kentucky Estate Planning Institute Program Planning Committee.

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Casey Robinson: When One Child Is More Successful; and Disinheriting a Child from a First Marriage

*Getty Images*

Understandably, parents almost always treat their children equally in their estate plan when the children are young. As children become adults, how an inheritance is divvied up may become more complicated. Here are the estate-planning stories of two families I have encountered over the years:

A father of two has a son who went through a run of bad luck, going without a job for months while trying to raise his children. His father generously supported him, giving him \$10,000 a month for two years. That's nearly a quarter-million dollars, and the son still has an inheritance coming. But would a 50-50 split between the father's two children be fair? It's subjective, but after all of the money the son received, it would almost feel like the father's daughter is being penalized for being more successful than the brother.

In this scenario, we can track how much money is being gifted and set up a specific account with a prorated amount of money for the daughter. The big question is, after all the money the father spent, is there enough left to balance out everything?

In another situation, I encountered a father of three on his second marriage, with one child from his first marriage and two from the current marriage. As with most married couples, all assets are left to the surviving spouse, but they decided that the final distribution should be contingent on who is the last to pass away. If the husband passes last, all three children receive

equal inheritances from their father. However, if the wife is the last to pass — which is more likely, because of an age discrepancy — the assets get split evenly between her two children, **excluding the child who is not hers from any inheritance at all.**

This scenario may not sound fair to the child who may not receive an inheritance, but keep in mind the child from the first marriage will receive assets from their biological mother. In this particular case, the wife has substantially more assets than the husband and doesn't feel it is fair that a third of her life savings ends up with a child who is not hers, unless it went to the husband first, in which case, she has obviously already passed. The husband, meanwhile, feels it is fair to split the assets among his three biological children.

I find it to be common that **parents with children from previous marriages struggle with what is “fair.”** Remember, wills can always be changed, so don't put off deciding simply because you can't ascertain what is fair. There are many variables that can affect these decisions on a case-by-case basis, but as with all estate planning, it's a personal process that ultimately comes down to the parents' wishes, not any established rules.

— **Casey Robinson**, a wealth counselor at **Waldron Private Wealth**, a boutique wealth management firm just outside Pittsburgh. Robinson has extensive experience assisting multi-generational families with estate planning strategies, integrating trusts, tax planning and risk management.

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Laura A. Roser: It's OK to Change Your Mind, But Don't Be Pressured Into It



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Sometimes your kids are going to feel like you favor one over another. The same is true in estate planning. **Sixty percent of failed wealth transfers are a result of breakdowns in communication** and trust within the family. You know what this means? You must be very, very clear about your intentions with your children before you are gone.

I spoke with one family about their estate plan and the mother said that she had planned on giving one of their houses to her husband's brother, but this infuriated their daughter because the daughter designed the home and had lived there for several years. She thought of it as hers. They are now changing their estate plan to bequeath the home to the daughter instead.

One of the worst things you can do is to not explain yourself to your heirs before a wealth transfer. It is so incredibly easy for them to see your actions as unfair. Your rationale may make sense to you, but when you explain it in person and have a dialogue with your heirs, you realize that you didn't consider their point of view.

Family dynamics can make these kinds of conversations tough. If you are worried about fights, accusations or being pressured to change your mind, you may want to seek the help of a mediator or your attorney.

With your estate plan, you are the one giving the money and, therefore, you have the final say. Listen to your heirs. Try to understand their point of view. **If a change makes sense, change it. If not, tell them you've made up your mind,** but let them know why.

— **Laura A. Roser**, the founder and CEO of Paragon Road, the leading authority in meaning legacy planning (passing on non-financial assets, such as values, wisdom and beliefs). For more information about legacy planning, visit www.paragonroad.com.

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Tracy Craig: Recognizing the Role of a Caregiver



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A typical estate plan for a married couple with children is for the parents to leave assets to each other and then to the children in equal shares. So, typically, there must be a good reason in the parents' minds to treat children differently.

One scenario where I consistently see parents leave one child more than the others is where that child is the primary caregiver for the parents as they age. This could be because the child lives with the parents, or because the child is nearby and helps with tasks of daily living, such as cooking, paying bills and taking them to medical appointments. **In recognition and gratitude of this assistance, in the estate plan, this “caretaker child” is often given a greater-than-equal share of the inheritance.**

In a recent case, I worked with an aging couple with three children, two of whom were married with children of their own, and one of whom was single and lived with and cared for the parents. In this case, the child is to receive the primary residence, and then a higher percentage share of the remaining assets. Rather than receiving a one-third share of the remaining assets, the caretaker child, in addition to the home, will receive 60% of the other assets. The other two children will split the remaining 40%, or 20% each. The parents wanted this disposition of the assets in recognition of the child always taking care of them.

— **Tracy Craig**, an estate attorney who is a partner and chair of **Mirick O'Connell's Trusts and Estates Group**. She focuses on estate planning, estate administration, prenuptial agreements, tax-exempt organizations, guardianships and conservatorships and elder law. Craig is a Fellow of the American College of Trust and Estate Counsel and an AEP®. She has received an AV® Preeminent Peer Review Rating by Martindale-Hubbell, the highest rating available for legal ability and professional ethics.

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T. Eric Reich: A Decision NOT to Split the Family Business



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Clients rarely ever bring up this topic, so I make sure I always do. The question I always ask is, **“Do you want to treat your kids *equally or fairly*?”** Of course, I usually get the deer-in-headlights look until the question really sinks in. I follow that question up by saying, “because these two concepts are very different things.”

An example of this principle I recently had was a business owner with three kids. Only one of the kids worked in the very successful family business, and had been there for the last 20 years. It would not be fair to that child to have to suddenly split the value of the company, which the child helped build, with the other siblings, who never worked in the business.

The “fair” thing would be for that child to get the business and the other children to either split the remaining assets if they’re sufficient to equalize the estate, or, in my client’s case, we purchased life insurance on the dad equal to 2x the value of the business to be divided between the other children.

The one child in the business made dramatically more income than the other two, but the other two were always allowed to join the business. They never chose to. **It wasn’t this child’s fault that the siblings chose less lucrative careers.**

In the end, the children inherited generally the same amount of assets, but the child in the business would clearly continue to earn significantly more in the coming years.

— **T. Eric Reich**, *President of **Reich Asset Management, LLC**. He is a Certified Financial Planner™ professional, holds his Certified Investment Management Analyst certification, and holds Chartered Life Underwriter® and Chartered Financial Consultant® designations.*

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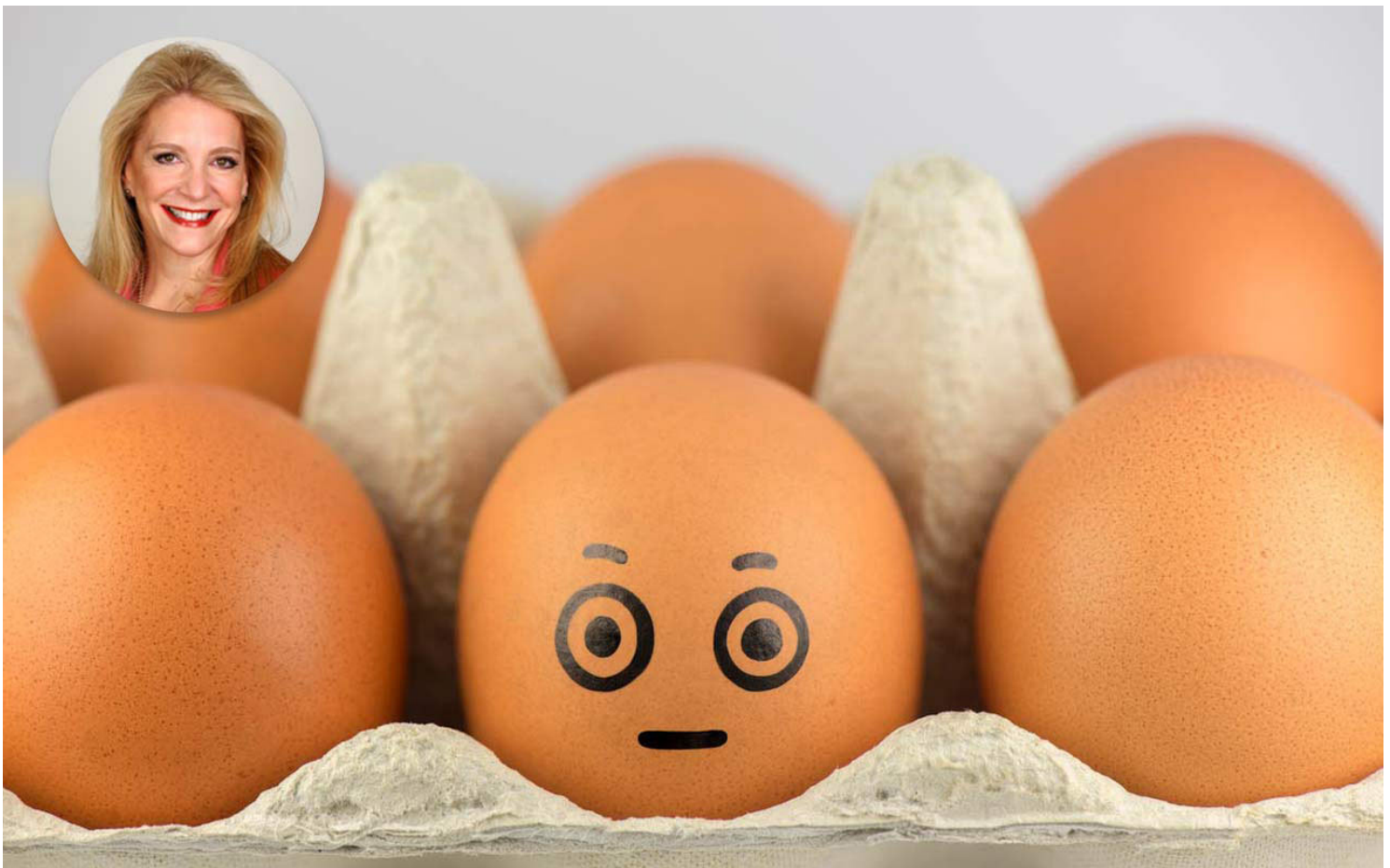
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Neale Godfrey: Life Is Not Fair, So Plan Accordingly



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Should you treat your kids evenly in your estate plan? In a word, “No.” Our kids are not the same, and treating them that way may be a big mistake.

I was dealing with a family who had a special needs child, and that child was going to need care for the rest of her life. Did she have the same needs as the other child who was, at this point, a teacher with two children? Obviously, not. Was it “fair” that the non-special needs child would not

receive as much money as the other child? No. Would it be fair to possibly saddle the healthy daughter with having to figure out care and possibly fund the special needs child for her lifetime? No. Life is not fair.

My advice to these parents was to set up a trust for the child-in-need and to make sure that she had lifetime care.

I also had dealings with another family who had three children. One of the boys had an addiction problem. The parents were not thrilled to leave one-third of their \$20 million estate to that child. I advised them to again, set up a trust, but in this case to attach strings to it.

I asked them what would allow them to feel comfortable leaving money to their son. The answer: If he stayed in rehab and was clean for at least three years. They now had a basis for the conditions of the trust.

The bottom line is that it is important to communicate your wishes to everyone involved. The last thing you want is to have the "surprise" after you are gone and even worse, have your loved ones hear about this from a lawyer, whom they may not even know. Communicate, communicate, communicate.

— **Neale Godfrey**, a *New York Times* #1 best-selling author of 27 books, which empower families to take charge of their financial lives. Godfrey started her journey with *The Chase Manhattan Bank*, and later became president of *The First Women's Bank* and founder of *The First Children's Bank*. Neale pioneered the topic of "kids and money," which took off after her 13 appearances on "The Oprah Winfrey Show." www.nealegodfrey.com

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