

# FAMILY

# FEUD

**PREVENT**  
SQUABBING  
benefactors  
from breaking  
the ties  
that bind.

By Alison MacAlpine

Fifteen years ago, a client dissolved into tears in Cathie Hurlburt's Vancouver office. This client—we'll call her Sandra—could see the writing on the wall. She was about to embark on an expensive and emotionally draining three-year battle with her step-siblings over the contents of her stepmother's will.

Hurlburt, a financial planner with Assante Financial Management Ltd., would find herself providing a mix of counsel and comfort as a blended family was ripped apart and a modest estate lost some \$50,000 to legal fees.

The crisis had been brewing for a decade, ever since Sandra's father Ted passed away. He and his new wife Eva had always intended for the couple's house (purchased by Ted long before

their marriage) to eventually pass to Sandra and her two siblings. Eva's two children were to receive their mother's investment assets. However, to duck taxes, Ted changed the ownership on the house so that he and his second wife would hold it as joint tenants to be transferred into her hands when he died.

Determined to honour her commitment to her late husband's children, Eva rewrote her will shortly after Ted passed away. The house would go to Sandra and her siblings, while Eva's own children would get her investments. At the time, the two assets were worth approximately the same. However, by 1990 when Eva died, the house benefited from a boom in Vancouver real estate prices and was now worth \$530,000.

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Photography by DW Dorken





Cathie Hurlburt  
financial planner  
Assante Financial Management Ltd., Vancouver

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Eva's own investments, by contrast, were valued at a mere \$65,000. Reeling with shock, and feeling slighted and virtually disinherited by their mother, Eva's children contested the will.

Two years into the fight, Sandra tracked down the widow of the lawyer who had written her stepmother's will. Rooting through her basement, amongst the countless bulging boxes of dusty client files, they found a letter written by Sandra's stepmother that laid out the reasons for her bequests. Eva explained that, in her mind, the house had never belonged to her. Although she had lived in it and maintained it, she saw the house as her husband's legacy to his children. The letter helped settle the legal dispute and, under the terms of the agreement, Sandra paid her step-siblings' legal costs and they received the \$65,000 to which they were entitled.

Sadly, nothing could repair the damage to extended-family relationships. Sandra and her step-siblings live thousands of miles away from each other—in British Columbia and New Brunswick respectively—yet emotionally they're much further apart. Hurlburt points out some simple estate

planning could have prevented the whole unpleasant situation: "If the father, instead of leaving the house outright to his wife, had left it in a spousal trust, it would have gone to his kids on her death but it would never have been her asset. They could have avoided the lawsuit. There would never have been that bad blood—three years of hell for everybody."

Indeed, many families are not aware of the estate planning options necessary to ensure their intentions are carried out on death. Like Sandra's father, they're preoccupied with minimizing taxes and probate and are reluctant to incur upfront legal expenses. Moreover, they're not doing the planning to prevent potential family feuds. The good news, however, is financial advisors are starting to discover their ideal positioning strategies to help clients develop estate plans that reflect their wishes and protect beneficiaries from devastating conflict.

### THE ADVISOR'S ROLE

Kristan Birchard, Ottawa-based chair of the CLU Institute, sees financial advisors as estate-planning quarterbacks for a team that includes all of the other

advisors who are important to a client—lawyers and accountants, for example, as well as business partners and key employees if a client owns a company. He has facilitated family councils, where "those who are inside and outside of the business all talk about what's important to do without using the words 'taxes,' or 'insurance,' or 'shares,' or 'ownership.'" Once everyone is on the same page, he says, strategies and products fall into place.

John Askin, too, believes advisors can play an extremely valuable role by getting families together to discuss their priorities. In fact, the founder and principal of the Wealth Strategy Group in Vancouver recently spent three-and-a-half hours talking to a family in which the father's plan had always been to leave

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John Milne, senior vice-president, Rogers Publishing Ltd., Healthcare & Financial Services Group, is pleased to announce the appointment of **Garth Thomas** to the position of publisher, *Advisor's Edge* magazine, *Advisor's Edge Report* newspaper and *Advisor.ca*

website. Since joining Rogers in 1997 Garth has consistently demonstrated the customer affinity, enthusiasm and strong work ethic that have earned him the respect of his clients and coworkers. In his new role Garth will be responsible for the day-to-day management of these properties, building upon their excellent track record, and leading the advisor sales and editorial teams to capitalize on their many opportunities.

Garth will report to Paul Williams who is now responsible for all of Rogers Publishing's Financial and Advisor Services properties and took Rogers into the retail advisor market in 1998. The consolidated group includes such market-leading titles as *Benefits Canada*, *Canadian Investment Review* and their sister conference and online businesses.

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Photography by Richard McDowell

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his business to his son. First, Askin asked the father to express his wishes. Then he turned to the son and asked, “Is this what you want?” When it turned out it wasn’t, the family talked the situation through and discussed other options.

“They all left, shook my hand, hugged me, and said, ‘This is the best meeting we’ve ever had,’” Askin says. “I just asked two questions! I didn’t have any solutions. I just asked the questions—but until you ask the right questions, nothing’s going to happen.”

Beyond quarterbacking the various professionals and facilitating family meetings, advisors can help their clients avoid feuds by learning to recognize potential sources of conflict. Listen for clues about family dynamics, suggests Wendy Templeton, vice-president of the estate planning group at BMO Nesbitt Burns in Toronto. Are siblings extremely competitive? Is there conflict among in-laws? Has a second marriage created challenging relationships?

Be aware, also, that an equal distri-

bution of assets isn’t always fair. Sandra’s case is a good example; splitting her stepmother’s estate into five equal parts would have been distinctly unfair from the deceased’s perspective.

The reverse is also true: What’s fair isn’t always equal. Roger McMillan, vice-chair of the Advocis Board of Directors in Toronto, owns an equestrian centre in Halton Hills, Ont. He and his wife plan to leave the farm to their two daughters because their son doesn’t want to be involved. So rather than giving him an equal share in the business, a life insurance policy will fund his inheritance.

#### **PLANNING FOR EVERYONE**

Few parents believe their children will allow a dispute about a will to deteriorate into a vicious legal fight. But conflict can occur in any family—and it’s not always about money.

“I’ve seen many situations where clients come in and say, ‘I don’t care if every last dollar of this estate goes to pay legal fees. It’s much more important to me that the S.O.B. not get a single

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dime out of this thing,’” Askin says. “Estate litigation is the battleground on which latent family feuds that have been festering, in many cases for decades, get played out.”

Both rich and poor can be affected by family feuds. “I’ve seen [fights] happen with estates as small as \$5,000 and others, obviously, with as many zeros as you can have,” observes Ottawa-based financial consultant Louise Diotte, who works at Investors Group Financial Services. “I remember a few years back a lawyer told me that she worked with two daughters

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of a person who had just passed away, and there was a vase—apparently a very nice vase—and they spent quite a bit of time in her office arguing over who was going to get that vase.”

In fact, according to Les Kotzer, conflicts about objects of sentimental value are under-appreciated in estate planning. A wills and estate planning lawyer with Fish & Associates in Thornhill, Ont., Kotzer has gone into the songwriting business with a two-track CD designed to get people talking about the rings, rugs and paintings that can tear families apart. He has also co-written a book, *The Family Fight: Planning to Avoid It* (available through [www.familyfight.com](http://www.familyfight.com)), that he promotes to financial advisors as a thought-provoking giveaway for clients.

“We have to somehow get families to

wake up to the realization that this is not a do-it-yourself project; that this is something you need professionals for. That’s why you deal with financial planners. That’s why you deal with lawyers and sometimes accountants,” explains Kotzer. “It’s not easy thinking about your own death. It’s not easy thinking that you may be incapacitated. But it’s something that you have to be willing to focus on.”

### **FROM THE CLIENT’S PERSPECTIVE**

Some forward-thinking clients are watching their friends become embroiled in family feuds and, as a result, are becoming much more receptive to professional help. “You hear horror stories all the time; there are always sources of conflict,” says Susan Legault, a teacher who lives in Orleans, near

Ottawa, and is a client of David McGruer, a certified financial planner with Dundee Private Investors.

Earlier this year, Legault and her husband André, president of a paper company, started working their way through a comprehensive planning process with McGruer and a lawyer he recommended. Together, they created a “comfort book,” which stores copies of all their important estate planning documents. They’re confident the tool will provide a roadmap for their three children. One of its most valuable features is space for a letter that explains reasons for the decisions they made.

John Cunningham runs Cunningham Fertilizers (1978) Ltd. from Leduc, Alta., just outside Edmonton. He, too, has seen families torn apart following poor estate planning. “I don’t want that

“We have to somehow get families to wake up to the realization that this is not a do-it-yourself project; that THIS IS SOMETHING YOU NEED PROFESSIONALS FOR.”

to happen to my family,” he says firmly. “My own parents handled their will so well and it was so well organized. It was a wonderful example of how to do it.” Cunningham started working with John Askin a year-and-a-half ago, and appreciates Askin’s willingness to work alongside his other professional advisors. Together, they’re developing strategies to accommodate the choice his three daughters have made not to become involved in the family business.

Another one of Askin’s clients, Pat O’Brien, who lives in Edmonton and works in the technology sector, is crystal clear on the importance of soliciting appropriate guidance around estate-planning matters. His advice to people? “Ensure you’ve got good professionals engaged. That’s so critical because most of us don’t have the detailed knowledge and the broad knowledge that someone like this can bring to bear. There were things that popped up in the course of doing this that would never have dawned on me to even be concerned about.”

Despite many clients’ interest in professional advice, advisors still face the challenge of approaching a difficult topic without frightening clients away. As Hurlburt puts it, “Some families can’t talk about money. They’d rather talk about sex or have their teeth pulled!”

#### STARTING CONVERSATIONS

McGruer has an estate-planning conversation opener that always gets a laugh from his clients. He tells them that when he was first starting out, he wrote a life insurance policy on both himself and his wife but forgot to warn her she’d be getting a call from a nurse to arrange a blood test. A few days later, his wife picked up the phone and the nurse exclaimed cheerfully, “I’m calling to arrange your HIV test!” Fortunately, marital harmony was restored after one very worried call to McGruer’s office.

Whichever way you decide to start discussions with clients, Templeton recommends you put estate planning on the agenda early by explaining that, as a matter of course, you’ll talk about wealth-transfer issues as well as wealth-accumulation-and-protection strategies. This lets clients know it’s part of the landscape, so it won’t be a surprise when it comes up next time, perhaps at an annual review.

When clients are ready to talk about their plans, Askin poses a couple of open-ended questions. The first one is, “In a perfect world, if everything went as you hoped and planned, what would you like to see happen to your business, to your estate, to your wealth—both now, while you’re alive, and on your death?” That question helps to nail down a client’s priorities. The second question helps to identify planning opportunities:

“If an unanticipated event occurs, then what?”—referring to an unanticipated event such as incapacity, premature death, divorce or insolvency.

Asking questions and listening are critical skills for advisors to develop, especially when it comes to estate planning. Éric Mercier, a financial planner with Mercier Services Financiers in Quebec City says, “You’ve got to help your clients by talking about what’s important to them.

“The industry is product- and concept-oriented, but it’s more about empathy and caring about people . . . to identify their priorities, not yours.”

Many advisors agree the cost of failing to help clients with estate planning is just too high. As Templeton notes, “The harm that is done when the family starts fighting often creates a complete breakdown of family relationships that becomes permanent . . . Clients are reluctant to enter into a complex estate planning process because they find the cost unacceptable, but the cost of sorting out a problem once the individual has died can be way higher, so it’s better to write the cheque now, get good advice and put a good plan in place.”

As for Sandra, she and her husband learned their lesson the hard way—but they learned it well. Today, the two of them are some of Hurlburt’s most diligent estate planners, faithfully reviewing their wills every two or three years and making changes whenever necessary. They are determined to make sure their three children never experience the trauma of a family feud. **AE**

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*Alison MacAlpine is a Toronto-based freelance writer and editor.*  
[advisorsedge@rmpublishing.com](mailto:advisorsedge@rmpublishing.com)