

The legal considerations of familial estrangement

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Intergenerational relationships are complex and, as children become adults, families sometimes experience strained relationships that result in estrangement. Familial estrangement is defined by Psychology Today as a situation in which “at least one family member begins distancing themselves from another because of longstanding negativity in their relationship.” (“Family Estrangement,” psychologytoday.com) It is more prevalent and typical than most people would surmise.

Statistics of familial estrangement are approaching those of divorce rates in the United States, with 43% of Americans reporting the experience at some point. (“Estrangement: The Silent Epidemic,” Psychology Today, Aug. 12, 2022, psychologytoday.com) Today, children are becoming estranged from one parent, a sibling, and/or extended family members from one parent’s side, more frequently than ever before. Sadly, the court system is effectively ill-equipped to handle these intricate and often complicated cases.

Hardships of this nature can be of significant emotional and psychological consequence. The act of walking away from one’s family members may be life-altering. Additionally, there are legal considerations that may need to be addressed, such as estate planning, health care directives, and custodial access to grandchildren.

Below, we look at key legal considerations and how best to navigate them.

Custodial rights

The relationship between grandparent and grandchild is particularly special, and when grandparents lose access to their grandchildren, the result can be devastating. Most states have laws that govern grandparents’ custodial rights. The statutes typically give grandparents the right to bring a legal action for both legal and physical custody rights when there is an established relationship between grandparents and the grandchild/ren prior to a death or estrangement occurring. There may also be time limitations on when these rights must be pursued or initiated in court in relation to when a parent dies and/or the estrangement began.

These laws often come into play when there is a divorce or breakup between an adult child and their spouse or co-parent and/or subsequent death of their adult child, giving the deceased spouse’s parents/co-parents standing to pursue legal and physical custodial rights to their grandchildren.

As in any custody case the court is charged with determining whether maintaining the grandparent relationship is in the best interests of the child. In arriving at this conclusion, courts look at the nature of the relationship between the surviving parent and the grandparents as well as the nature of the relationship between the estranged grandparents and their own child in determining whether the grandparent relationship outweighs any strain and discomfort the child at issue may experience from his or her parent’s and grandparent’s relationship.

When estrangement exists between the adult child/parent and their parents, the road through the courts can be a difficult one as the individuals involved do not always have an enforceable legal right to visitation/partial physical custody, particularly if the grandchild is living in an intact, healthy family environment.

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It is recommended that grandparents maintain an involved relationship with their grandchildren on an ongoing basis because the court will ultimately inquire as to whether maintaining that relationship is in the best interest of the grandchildren upon the death or divorce of the grandchild’s parent.

Estate planning

Another legal realm potentially affected by estrangement between a parent and their adult children/grandchildren pertains to estate planning and the rights of children and grandchildren to assert legal claims against a parent’s estate, both when a parent dies without proper estate planning documents in place, or the estate planning documents are outdated and not reflective of the current parent-child estranged relationship.

Family members may contest a decedent’s will that provides for an estranged family member to benefit, regardless of the fact they are and/or had been estranged from the decedent at the time of his or her death. A will contest will likely ensue in these circumstances.

Sometimes family members may also have rights to contest the estate planning documents of their deceased “family members” because the decedent may have failed to revise their estate plan with respect to the estranged adult child, a situation that may result in a financial windfall to the estranged child.

The same can be true if an adult child predeceases their parent, where the deceased child’s estate could ultimately go to their estranged family member(s). Estate planning is more than the monetary division of assets or the choice of a power of attorney. An individual’s legacy is at stake.

Where there are statutory rights that determine how a decedent’s estate will be divided in the event they die without a will — “intestate” — regardless of the fact the family members may have been estranged for many years, the statute trumps the facts. That is why it is so important to have current estate planning documents that you periodically review and update as necessary.

Where a family member has a will and related estate planning documents that have/have not been updated at the time of his/her death and they provide for an estranged family member to inherit/benefit, the end result is an often costly, time consuming and nasty legal battle between the surviving family members and the estranged family member over the distribution of the decedent’s estate consistent with the estate plan in effect.

To facilitate a smooth administration of the estate and attempt to mitigate future discord, it is recommended that one add a codicil to their will stating that if any beneficiary contests the will that they, along with their heirs, will be disinherited. Enforceability of these provisions may depend upon which state or country you live in at the time of your death.

Health care proxy

Aging parents of adult children who have become estranged from their children often lose the individual(s) who would have been

a support system for them. Failure to update estate planning documents may have major consequences on decisions about medical care and treatment.

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When implementing final estate planning decisions, a confidential heart-to-heart with all offspring is recommended. It may be that the answers gleaned from this conversation bring the family together or, at the very least, enlighten a parent’s decision as to which of their children is truly best prepared to handle life or death decisions effectively.

Conclusion

Estrangement is a tragic occurrence and is most often born out of dysfunctional circumstances. This dysfunction grows over time until it reaches its tipping point. In moving forward, the older generation should attempt to make the best of a disruptive situation by interacting with their offspring as fairly and equitably as possible.

Seeking assistance at the outset from a family law attorney and/or estate planning counsel, as well as a mental health professional with extensive familial system experience, is far more likely to produce positive results. Note that laws can vary by jurisdiction, so it is critical to work with legal counsel familiar with the laws in your area, as well as a family law attorney who can provide guidance based on the unique aspects of your case.

About the author



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