



Will Hower

Craig R. Hersch *Florida Bar, Board Certified, Wills, Trusts & Estates Attorney; CPA*

ARE YOU REALLY DOING THEM ANY FAVORS?

Sometimes a parent will be confronted with the awful prospect of having to support a deadbeat child. I want to differentiate here between the child who has an extraordinary circumstance, such as a health concern or a divorce (who is otherwise generally responsible), from the child that, for no apparent reason, leaps from one calamity to the next. Today I'd like to point out how long-term, continued support of a continually irresponsible child can have a negative effect on the family and eventually may lead to trouble in the parent's estate.

It starts innocently, at first. Perhaps it's bailing out a son who can't make a car payment. Then he becomes delinquent on his mortgage and needs a "quick loan". Occasionally it grows into something far more serious, such as an adult child's need for her parent to erase enormous credit card debt, or to pay for drug or alcohol rehabilitation.

My experience in watching families in these situations is that the "bailed out" adult child, rather than being grateful to Mother and Father, keep coming back. They ask for more. In many instances, Mother and Father keep giving it to them.

Mother and Father keep giving despite their own feelings of resentment. Despite the resentment from their other children who don't need the help. "My other son doesn't need the help," one client once said to me, "he's stable and has a good job. So I'm not worried about him."

You don't think that the good child resents his deadbeat brother from taking thousands of dollars from their parents? How do you think the good child feels when the estate lawyer tells him that all of the bailouts are taxable gifts that have reduced his parents' estate tax exemption amount?

After a while it becomes dangerous to the parent. Their assets start to run low. "I just needed to loan her a few thousand dollars. My daughter will repay me," they'll say more out of hope than reality. The reality is that they'll never see the money again. Another reality is that Mother and Father have been out of the workforce for many years and may not have the ability to rebuild reserves. Mother and Father must live off their retirement savings. The reality often is that Mother and Father cannot financially continue to bail out their child. It will eventually break them.

As a father of three daughters I understand how hard it must be to cut off an irresponsible child that claims need. You still love them and want to shield them from harm. You might be inclined to give them the money, especially when you might have savings available. But are Mother and Father really doing that child any favors? Let's look at what happens when Mother and Father die.

If Father dies leaving Mother alone, and Mother is more sympathetic than Father, Mother might jeopardize her own savings. She might continue to bail out the daughter at Mother's own financial peril. If this is a possibility, Father should immediately make provisions in his estate planning documents to protect Mother from herself.

Let's take it one step further. What if Mother and Father are both gone now? The assets that they have left are usually held in a trust or perhaps the estate. Presume that Mother and Father's documents leave everything to their children equally. The assistance for the one child has come to an abrupt end. While the estate and trust are being administered, a process that can take several months, the child has been cut off.

She might call my office. "I need \$2,000 or I'll miss another mortgage payment and my house will be foreclosed," I might hear as the attorney for the estate. So I call one of the responsible children, who are usually the ones that have been named as the personal representative (executor) or trustee.

The responsible child is rarely sympathetic. "She already took several thousand dollars from Mother and Father while they were alive," they might say. If we distribute anything to her, will the distribution be charged against her share?

"Yes," I'll answer. Sometimes, however, the share doesn't exist. This might be especially true if the parents directed in their documents that lifetime gifts were to be counted toward the share for that child. So the child that has relied on the handouts all of this time discovers that her share has been consumed. She won't get much from the estate. Or if she does receive anything from the estate, she quickly runs through it.

What happens next? The story doesn't end happily. Maybe her brother and sister feel guilty and lend some more money from their own funds. They won't get it back, and the transaction itself may lead to family fissures. Or if the siblings are unsympathetic, the needy child blames her problems on her siblings.

There are strategies one might employ in one's estate plan when this situation may arise, but those strategies must be planned ahead, before Mother and Father die. In any event, there is never an easy way out.

If this column happens to sound familiar to you or someone you know, it's time to think about options now rather than employing a "head in the sand" strategy. Putting it off will only make it worse for the ones left behind.

©2007 Craig R. Hersch.
You may contact Craig at hersch@sbslaw.com