

Prodigal Son Parable Has Relevance to Modern Estate Planning

There is a parable in the Bible about the prodigal son. For those not familiar, it goes like this: One of two sons, the younger, approaches his father and asks for an advance on his inheritance. The father agrees and provides his son with half of his wealth. The younger son promptly leaves home and squanders the money on loose living. Destitute, he eventually returns home and is welcomed back by his father with open arms. A feast is held to celebrate his return. The older son is greatly irritated. "Why," the older son asks, "are you bailing him out? I've been good with my money. I've never asked you for help. He asks. He gets. He blows it all. And now that he's back, you act as if nothing has happened!" The father says to his older son, "Be glad. Your brother has come home."

Parents often provide money to one or more of their adult children during their lifetime. Whether the money is used to purchase a home, fund an education, start a business, or simply to get one of their adult children through one of life's rougher spots, it's something that a lot of parents do. But as in the parable, financial assistance can be a source of irritation among siblings if the assistance is not equally provided. While this poses its own problems for family dynamics while the parents are alive, things can really get complicated after they are dead.

Generally speaking, an executor has a duty to collect debts that are due to the deceased. This begs the question, then, was the money provided by the parent intended to be a loan or was it intended to be a gift? And how much are we talking about here? One amount? Or a series of amounts over a lifetime? Rarely if ever does a parent document the financial assistance given to a child, so the executor has only the recollections of the parties involved to work with. One of the parties directly involved, of course, is dead. The other party has an interest in recalling how the amounts provided were intended to be gifts. Everyone else, like the other brothers and sisters who will share in the eventual distribution of the estate, have similar interests in recalling how the amounts provided were loans, intended to be repaid. It may even be the case that the parent told the recipient the money was a gift, but for purposes of keeping peace in the family, told other family members that the money would be repaid someday. The executor doesn't have the best evidence to work with here. Here's another thing to remember: it is often the case that the executor is not entirely impartial. This is certainly the case where one of children involved is also acting as the executor. Does the executor have a soft spot in his or her heart for the recipient? Or does the executor bear animosity towards the recipient? How much additional money does the executor stand to inherit if the amount is collected in?

Even if the amount in question can be established and also that the amount provided was intended to be a loan, there are still legal issues to sort out. Can the loan still be collected or was it made so long ago that its collection is now

barred by the *Limitations Act*? Unless the recipient is prepared to acknowledge the indebtedness, enforcement of a long outstanding loan could be impossible.

The parable of the prodigal son ends without telling us whether the older son was prepared to be as understanding and forgiving towards his brother as his father was. Ask yourself this: What do you think your children would do? If you're not sure, there are steps that you can take to reduce the possibility of a dispute among your children after you have passed away. Talk to your estate planning lawyer about it.