

The Wisconsin Supreme Court Does Not Want You to Talk About Your Estate Plan

Clients often ask “Should I review my estate plan with my children?” Generally this is a choice each family makes, with some families being very open with their children and other families being very tight lipped about things. In July 2017 the Wisconsin Supreme Court quietly made a dramatic change to the Wisconsin Statutes that will penalize families who openly discuss their estate planning.

Prior to July 2017 Wisconsin law included what is called the “dead man’s statute.” This rule essentially meant that what you write in your Will or Revocable Trust controls how your estate is divided. If, after your death, one of your children were to say “Mom told me I should get everything,” or “Dad told me I get the farm and my sisters get nothing,” these statements would be disregarded. Only claims somehow supported by some kind of writing or a disinterested third party would stand up in court. The law recognized that it is easy for self-interested family members to stir up trouble and provoke costly litigation by making outrageous statements after their parents were unavailable to set the record straight. The requirement that there be something other than statements no other person ever heard knocked down almost all potential Will contests.

However, the Wisconsin Supreme Court decided to delete the statutes that make up the “dead man’s statute.” Does that mean you are not allowed to talk to your children about your estate plan? Not exactly. However, it is now so easy for self-interested family members to twist your words into a Will contest that you are best served to say nothing at all.

Your Will and Revocable Trust are solid estate planning documents that you can rely upon to convey your intentions for your family after your death. It may not be reasonable and impractical to say that you should *never* discuss your Will or Revocable Trust with your children. However, it is clear that you need to be very careful what you say and how you talk about your estate plan.

The new law under the Wisconsin Supreme Court’s approach puts the burden squarely on you to be precise and accurate about what you say to your children **and** see your estate planning attorney to put any changes in writing very soon after you mention them to anyone. Failure to do either of these will cause real hardship for your family when they suffer the costs, uncertainty and strained relationships that come with litigation after your death.