Equal on paper does not always feel equal in life

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Why succession planning should reflect the realities of family life, not just equal percentages in a Will.

When parents prepare a Will, a common instinct is to divide their estate equally among their children. It seems simple, fair, likely to avoid conflict, and often it is the right approach. Sometimes, though, family dynamics are not that straightforward.

By the time a parent dies, children may have had very different experiences, contributions and expectations. As a result, what looks equal on paper can feel deeply unfair in practice. There are many situations where an equal division of an estate may cause resentment or disputes among family members.

One child has already received significant financial assistance

Parents often help children during their lifetime. One child may have received a substantial gift towards a first home, funding for a business venture, assistance with education costs, or other financial support that was not provided to their siblings.

If those gifts are not taken into account in estate planning, a child who received little or no assistance may feel disadvantaged when the remaining estate is divided equally.

One child has provided substantial care and support

In many families, one child takes on a greater role in caring for ageing parents. This may involve helping with medical appointments, managing finances, maintaining a property, or providing care over many years.

Often this assistance comes at a personal cost, including lost income, reduced career opportunities, or significant impacts on family life. An equal division of the estate may not reflect those contributions.

Loans have never been formally dealt with

Parents frequently lend money to children without documenting the arrangement clearly or regularly reviewing whether repayment is expected.

When a parent dies, questions can arise about whether advances were gifts, loans, or something in between. If one child owes money to the estate, other beneficiaries may expect that to be taken into account before the estate is distributed.

Promises were made but never documented

It is not uncommon for parents to make statements such as:

“The farm will be yours one day.”

“You’ll be looked after because of everything you’ve done for us.”

“We’ve already helped your brother, so we’ve set something aside for you.”

If those promises are not reflected in the Will or other estate planning documents, disappointment and conflict can arise after death.

Not every perceived unfairness can be fixed after death

New Zealand law provides several avenues for challenging the distribution of an estate.

Depending on the facts, potential claims may arise under:

- The Family Protection Act 1955 – where a family member believes adequate provision has not been made for their proper maintenance and support.
- The Property (Relationships) Act 1976 – where a surviving spouse or partner may have relationship property entitlements.
- The Law Reform (Testamentary Promises) Act 1949 – where someone provided services to the deceased in reliance on a promise of reward in a Will.
- Claims relating to loans, gifts, constructive trusts or equitable interests – where the circumstances support a separate legal or equitable claim.

However, the existence of these legal remedies does not necessarily mean a successful outcome.

Estate claims can be expensive, time-consuming and emotionally draining. Evidence may be incomplete, memories may differ, and the person best placed to explain their intentions is no longer available. Litigation can also cause lasting damage to family relationships at a time when families are already grieving.

The better approach: planning for fairness

For many families, the best solution is not to leave questions to be resolved after death, but to address them during the estate planning process.

Fairness may require recognising significant lifetime gifts, accounting for outstanding loans, acknowledging family members who have provided care, or documenting promises and expectations clearly. In others, equal treatment may still be the right outcome.

Every family is different, so tailored succession planning matters. A Will that works well for one family may create disputes in another. Clear communication and well-drafted documents can significantly reduce the risk of misunderstandings and disputes later.

If you are preparing or reviewing your estate plan, it is worth asking whether an equal division truly reflects what you consider fair. Because sometimes, what is equal on paper does not feel equal in life.

How Cooney Lees Morgan can help

Our private client team regularly advises individuals and families on Wills, trusts, estates and succession planning that matches their unique circumstances. We also help those who feel they have not been treated fairly in a Will to understand their position and their options. Contact our team to find out more.