

Practical Thoughts for Avoiding Estate Litigation

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Agenda

- Executors' Liability- legal background
- Will Preparation Gaps
- Financial Planning Gaps
- Power of Attorney as a catalyst for trouble
- Estate Administration Fallout



The Small Print

- What lawyers don't mention . . .
 - Executors assume the legal rights and obligations of the deceased party
 - The executor can sue others . . . and others can sue them as the personal representative of the estate
 - Quitting is usually not an option
 - Executors are personally liable to the creditors, third parties and beneficiaries of the estate for their estate activities
 - FYI . . . The estate isn't "closed" just because the money was distributed – the executor is still on the hook



Why this is important

- Lawyers run a business fixing estate problems
 - Financial and Tax Planning are necessary but relatively straightforward financial calculations
 - The “soft issues” become “hard problems” for your estate after you’re gone
 - What the hard problems you leave behind mean to your executor and beneficiaries



Main Problem Areas

- Inheritance Planning
- Will Preparation
- Financial Planning



Inheritance Planning Gaps

- Many people only consider the money aspect but forget to
 - Plan around social issue impact including family law
 - Discuss plans in advance with beneficiaries
 - Confuse fair with equal
- Complete an Inheritance Planning Guide for you and your lawyer



Will Planning Gaps

- Many testators do a weak job completing the estate questionnaire for the lawyer
- You get what you pay for – the 20 year old will – has nothing changed in your life in 20 years? Get it updated!
- Many lawyers don't know what the estate plan looks like
- Some lawyers don't make any provision for estate admin insurance and leave the executor exposed



The Will Is The Map For The Executor

If you don't know where you're going, any road will get you there

- Estate litigation often results from bad planning, not bad financial planning
- Executors usually have no plan to follow except the will
- Prepare an information package document to help your executor
- Insert an insurance direction to protect your beneficiaries and executors from estate litigation expenses devouring your estate



Financial Planning Gaps

- Planners are usually good with the numbers
- May overlook the soft issues related to inheritance planning
 - Family history
 - Relationships
 - Family law circumstances with beneficiaries
- Most never see the will and don't know if the financial plan matches the testators will



Financial planning gaps

- Provide a copy of your will for review to your financial advisor
- Ask if the financial plan that they prepared properly represents your will intentions
- If it does not, you may need to rethink your will provisions or the estate plan



Financial Planning Gaps

- Younger beneficiaries may not have much money
- The testator's financial advisor may be able to provide them meaningful early advice where family law is concerned



Power of attorney for property

- POA often “included” with will but usually not well explained other than “be careful”
- Often the grantor knows little or nothing about the risk
- Many do little or no investigation of the attorney’s actual circumstances
- Many POAs treat the money as their own, thinking it will be theirs soon anyway
- Require periodic account passing to avoid losing your money
“one tube of toothpaste at a time”



CAUSES OF ESTATE PROBLEMS

- FAMILY
- FINANCES
- FOLLOWING DIRECTIONS
- COMMUNICATION



Plan Better To Avoid Hard Issues For Your Executor

Why do executors get sued?

- **FAMILY**
 - Excluded or treated differently
 - Extended/blended family complications
 - Individuals claiming dependency on your estate
 - Non-disclosure suits from private real estate transactions
 - Cottages and heirlooms cause problems
 - Pressure to distribute money early
- **FOLLOWING DIRECTIONS**
 - Poorly drafted or outdated wills
 - Conflicts of interest when executor also beneficiary
- **FINANCE**
 - Charities not friendly when they're beneficiaries
 - Poor management of financial assets
 - Loans to family members requiring repayment
 - Power of Attorney acrimony carries over to executor
 - "Gifting" of joint property (to avoid taxes) to POA
- **COMMUNICATIONS**
 - Executor misses a beneficiary



Avoid An Estate Nightmare

- ERAssure can provide you the reference books for your Financial Advisor to help you through the plan.
- There's nothing to buy.
- It's a simple 3 step solution:
 1. Assess and identify issues that may give rise to problems
 2. Plan and review your POA and WILL to ensure that they match your intentions
 3. Protect your executor, estate and beneficiaries with an insurance provision in your WILL



Easily Available Free Planning Tools

- Contact your ERAssure estate risk consultant at **1-855-636-3777** or **info@erassure.com** and we'll be glad to get you started
- Planning Tools available at **www.erassure.com**
 - Inheritance Planning Guide
 - Will Planning Guide
 - Executor Guide
 - Insurance protection clause for your Will



Thank you!

