

TOP TEN ESTATE SETTLEMENT PROBLEMS AND WHAT TO DO ABOUT THEM

(Keeping Your Donors From Rolling Over in Their Graves)

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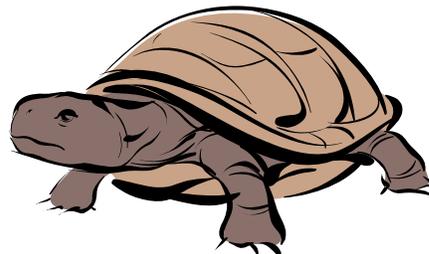


INTRODUCTORY COMMENTS



- Who handles estate settlement at your charity?
- How often do issues arise?
 - Litigation
 - Quasi-Litigation
 - Problems

THE SLOW MOVING ESTATE/TRUST ADMINISTRATION



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- Use a tickler system.
- The squeaky wheel gets greased.
- Get others involved.
- Get the AG involved (especially in NY, NJ, and PA).
- Calling the probate court & getting a motion to show cause.
- Filing a motion to compel distribution.

FAILURE TO PROVIDE REQUESTED INFORMATION



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- Know who you are dealing with - attorney/ professional trustee v. individual executor/trustee.
- Give them options to make it easier.
- Explain why you need what you are asking for (audit requirements, etc.).
- Site the statute giving you your rights.
- Don't sign receipts or waivers or deposit a final distribution check until you get what you want.
- "But none of the OTHER charities are asking for this." – Yes, they are.

ARIZONA STATUTES – DUTY TO INFORM

- For estates/executors - §14-3705
- For trusts/trustees - §14-10813



UNWANTED ASSETS



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- Potential Examples: oil/gas/mineral interests, tangible personal property, timeshares, cemetery plots, unmarketable real property.
- Disclaim, Disclaim, Disclaim.
- Courthouse Auctions/Sale to Neighbors.
- EnergyNet.Com and similar services.
- E-Bay, E-Bay dealers and event auction.
- Pawn it off on someone else.

EXCESSIVE OR HIGH FEES



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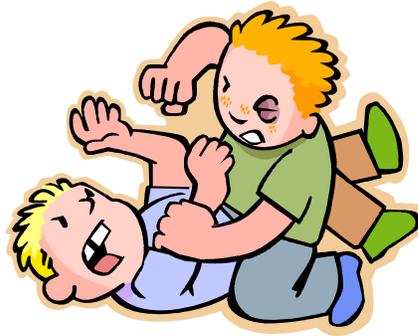
- Types: attorney fees, executor commissions, trustee fees, caretaker fees, etc.
- Know the statutory & customary rates for your state/region.
- Ask for documentation of hourly billing.
- Complain (but do a cost-benefit analysis first – is it worth it).
- The all-time best excessive fee story ever.

ARIZONA STATUTES – FEES

- “REASONABLE FEES”
- For personal representatives - §14-3719
- For PR’s attorney - §14-3722
- For trustees - §14-10708
- For trustee’s attorney - §14-11004



WILL CONTESTS



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- Categories: undue influence and lack of testamentary capacity.
- Get an attorney – but settle.
- Know the parties, the stakes and how everyone is going to get paid.
- Keep in mind – you’re almost always the “good guy” as the charity.
- The longer money is tied up, the itchier non-charities will get to settle.
- It’s (almost) always the nephew.

DETERMINATION OF BENEFICIARY ISSUES



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- Most popular flavors: (1) the misnamed charity and (2) successor-in-interest/ merger problem
- Keep a history of documents accepted under other names; especially if a court has entered a ruling on validity; create an affidavit in support.
- Keep merger paperwork handy and organized.
- Know your prior addresses.
- Know your competition (sound-alike orgs).
- Level of response required.

THE INTERVENING CONTINGENCY YOU MUST MONITOR FOR YEARS

VII



THE INTERVENING CONTINGENCY YOU MUST MONITOR FOR YEARS

- Common types: retained life estates in real estate, life income trusts, guardianship issues.
- Get the life holder to buy you out or sell jointly, if possible.
- Monitor, Monitor, Monitor.
- If applicable, contract who's responsible.
- Confirm annually that the contingency hasn't occurred (i.e. is that guy still alive?).

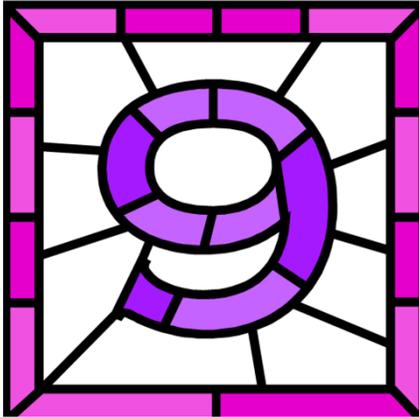
AFTER-DISCOVERED ASSETS



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- In general, routinely check unclaimed property websites (for states you operate in) under your charity's name and variations thereof.
- During an open estate, check unclaimed property websites for the decedent's name.
- Negotiate fee rates with asset recovery services. Play the charity card.

THE “RESTRICTED” UNRESTRICTED GIFT



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- Have a clear and well-documented policy on gift restrictions.
- Compare to the other charitable bequests in the document.
- Compare to lifetime giving, if any.
- Require additional documentation of donor’s intent – such as a letter from the trustee/executor.
- Find creative ways to recognize donor.

THE SPECIAL REQUEST – COMPLETE WITH SOB STORY



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- Examples: donating to a memorial, the heir in need, unique “final” costs.
- Private benefit – hang you hat on it.
- Create a united front with the other charitable beneficiaries.
- Find a way to recognize within your organization that doesn’t affect the bottom line.
- Do a cost-benefit analysis.

LAST POINTS WORTH REMEMBERING

- Just because you're a charitable beneficiary doesn't mean you don't have the same rights (and responsibilities) as any other type of beneficiary.
- Making sure the deceased donor's wishes are properly honored doesn't ever make you ungrateful for the gift they have bestowed upon your organization.

