



The 27th Annual

Planned Giving CONFERENCE

What to Do When the Donor Dies: Navigating the Estate Settlement Process

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Aviva Shiff Boedecker, J.D.

Senior Consultant

415.940.0946

aviva.boedecker@SHARPEnet.com



Today's Topics

- Post-mortem donor relations
- Charities' rights and responsibilities
- Understanding documents
- Working with estate representatives
- What to expect regarding distributions
- Releases and waivers
- When to call in an attorney

Why is this important?

- This is the PG program's payoff!

BUT....

- Significant assets are often lost between date of death and closing of estate or trust

Primary Causes of Estate Shrinkage:

1. Not understanding the estate administration process
2. Failing to pay attention
3. Not following up
4. Theft & embezzlement

Prepare While the Donor is Alive

1. Get information about the estate plan/gift
 - Make sure you understand donor's intent
 - Review your gift acceptance policies
 - Work out any potential problems
 - Document the plan
2. Pay attention to your donors

When you Learn of the Death

- Understand the donor's relationship with the organization and various individuals
- Notify colleagues
 - Make sure the individual is removed from mailing lists
- Pull out your Post-Mortem Stewardship checklist
- Write condolence note(s)
- Deal with your feelings

Memorial Gifts

- The good
- The bad
- The awkward
- Stewardship of memorial fund donors

Understanding Estate Administration: Wills vs. Living Trusts

A will's primary purpose is to transfer the decedent's property.

- Wills are effective only at death
- Administered under court supervision

A trust's primary purpose is to transfer property, but it can fulfill many other objectives

- Court is not involved
- Trusts can be operational during lifetime
- Trusts are private

Understanding Estate Administration: Bequests from Wills & Living Trusts

- Specific Amount
- Specific Property
- Residue or Percentage of Residue
 - Tend to be the largest gifts
 - Present most settlement issues
 - Every dollar spent during estate administration affects amount of charitable distribution

Rights of Charitable Beneficiaries - Wills

California Probate Code governs all aspects of administration of wills and trusts.

- Beneficiaries' rights include receipt of :
 - Notice of a petition for probate
 - Accounting of estate's activities – including payments made and monies collected
- May seek replacement of a personal representative
- May sue the personal representative for breach of fiduciary duties

Rights of Charitable Beneficiaries - Trusts

For irrevocable trusts, rights include receipt of:

- Notice of the existence of the trust.
- A copy of the trust.
- Trust accountings and information about the beneficiary's interests in the trust.

Beneficiaries have the right to enforce the terms of the trust and to hold the trustee accountable for any wrongful acts or omissions that affect that beneficiary's interests.

Probate Code sec. §§16060

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California Probate Code sections 16060-16064

“...upon reasonable request by a beneficiary, the trustee must provide the beneficiary with a report of the information relating to the assets, liabilities, receipts, and disbursements of the trust, the acts of the trustee, and the particular terms of the trust that are relevant to the beneficiary's interest.”

Staff/Board Fiduciary Obligation to the Organization

- Understand the estate administration process
- Ask for documents
- Read and understand the documents
- Pay attention to the estate
- Evaluate carefully offers of reduced pay-out or settlement
- Understand what litigation entails

Check the Documents

- Make sure you have all the amendments
- Read the documents!
- Ask questions
- Insist on copy of inventory

What to Look for in the Documents

- What are you getting?
- Is there a specific purpose?
- Is the bequest an endowment?
- Can you accept the gift?
 - Will the charity incur expenses?
- Who is the trustee/executor?
- Who are the other beneficiaries?

Communicating With the Estate

- Tell them what you need
- Ask:
 - What do they need?
 - What is the time frame for administration?
 - What is the estimated value?
 - Do they anticipate and issues?
 - Who should you thank/communicate with from the family?

Responsibilities of Charitable Beneficiaries

Fiduciary responsibility to the donor

- To see that the donor's gift is completed
- To make sure the gift is used properly

How to Collect from Wills and Living Trusts

- Checklists, checklists, checklists
- Create a good relationship with estate representatives
 - Offer the documents they will need
- Request copies of documents
 - Specific bequest
 - Residual or percentage bequest
- Ask about timing

Understanding the Trustee/Executor's Job

- finding assets,
- securing and sorting possessions,
- getting appraisals,
- paying bills and debts,
- terminating utilities and subscriptions,
- paying funeral expenses,
- arranging income to surviving partner or family,
- finding an attorney and accountant,
- making claims for life insurance, annuities, pension plans when estate is beneficiary,
- maybe finding out who is the beneficiary,
- maybe mediating between heirs,
- making distributions to heirs including transferring ownership of accounts & real estate
- filing final income tax return, estate tax return and intervening tax returns for the estate itself,

Distributions - Fees

- What does the trust say?
- California has statutory fees for executor and attorney based on size of estate
 - Trustee fees generally do not exceed 1% of the trust value
 - Attorney and extraordinary fees can be much higher
 - Extra fees for extra work

Taxes

- Estate income tax
 - Income distributed to beneficiaries not taxed to the estate
 - Income distributed to charity is tax free
 - Suggest executor distribute income in the year the estate earns it
- Allocation of estate taxes
 - Rarely a factor under current tax law
 - Watch for “equal distributions” or division of assets after payment of taxes

Distributions - Check the Numbers!

- Compare inventory values with final accounting
 - Accounting essential for residuary beneficiaries
 - Is it the amount you expected
- Review expenses
- Pay attention to fees, expenses and tax calculations
 - Allocation of tax liability can make a big difference
- Re-review before depositing the final check
 - Is it the amount you expected?

Real Estate

- Watch for sale price compared to inventory value
- Should you accept real estate?
 - Make an informed and conscious decision
 - Beware of Dog Properties
 - Timeshares
 - Get environmental assessment prior to accepting
 - 6-12 months from date of death to disclaim
 - Who will manage it?
- Check expenses

Distributions

- If no distributions when expected:
 - Contact the executor
 - Ask them to consider early, partial distributions
 - A “refunding agreement” for early distribution is reasonable
- Distributions must be made within a “reasonable” time
- Check accounting PRIOR to cashing final checks

Waivers and Agreements

- Reasonable to indemnify executor if unexpected audit results, etc.
- Overly broad waivers
- Distribution may not be contingent on agreement to indemnify
- Beware of signing special agreements

Retained Life Estates

- Secure the property
 - Insurance
 - Maintenance and management arrangements
- Other residents
- Documents
 - Death certificate
 - Deeds
- Arrange for disposition

Gifts from Retirement Plans & Insurance Products

- What you'll need
 - Death certificate
 - Each company has its own forms
- Calendar for follow-up
 - Distribution should not take a long time
 - Delays are not unusual
 - Helpful to have a copy of the designation of beneficiary form
- Calendar for follow-up
- Check calculations when proceeds come in

Life Income Gifts

- Notify Trust Administrator & business office
- Check document provisions
 - If organization is not the trustee: request documents
 - Additional income beneficiary?
 - Final payment date?
 - If successor beneficiary – right to revoke?
- Obtain death certificate
- Trust Administrator prepares final tax documents
- CGAs may yield additional deduction if donor did not live to life expectancy

Sticky Issues

- When no notices are forthcoming
- When the gift is smaller than expected

If you have reason to believe the donor planned a gift/larger gift

- Ask the administrator
- Contact a spouse/relative

Factors Affecting Distributions

- Erosion of estate value due to donor needs
 - Longer life spans
 - Low interest rates mean donors may be using more principal
- Family members in need of funds may be more prone to fight
- “Something’s wrong”

Sticky Issues

- Outstanding pledges
- Problematic restrictions
- Competency issues
 - Issue can be raised by family or others
 - Drafting attorney may be helpful
 - Pay attention to what goes in your file!

Sticky Issues

- Unhappy/hostile heirs

Fight over Kinkade's will gets nasty

By Julia Prodis Sulek
Bay Area News Group

The battle over world-famous artist Thomas Kinkade's estate is getting nastier.

His girlfriend has produced barely legible, handwritten notes she claims Kinkade wrote, giving her the keys to his Monte Sereno mansion and \$10 million to establish a museum of his original paintings there.

In documents obtained Monday by this newspaper, Amy Pinto-

Walsh — who began dating Kinkade six months after he separated from his wife, Nanette — also seeks to administer \$66.3 million from Kinkade's estate. That figure appears to include tens of millions of dollars worth of Kinkade's original artwork as well as other notable paintings he collected and hung in his home.

Nanette Kinkade, who was married to the artist for 30 years and has four daughters, has been

fighting Pinto-Walsh every step of the way, claiming in court documents that she was a gold-digger intent on fleecing the estate.

Pinto-Walsh, however, said in a court filing obtained Monday that although she and Kinkade had their troubles, they were in love and planned to wed in Fiji as soon as Kinkade's separation and ultimate divorce were finalized. They had even shopped for an engagement ring, she said.

When to Hire an Attorney

- No response from estate representative or attorney
- Notification of legal challenge
- If a dispute arises
- Charity is identified incorrectly in documents
- You cannot understand or reconcile documents and cannot get internal help
 - Residual or percentage bequests
- Consider joining with other charities

Post-Post-Mortem Stewardship

- Family
- Advisors
- On-going contact
- Long-term contact
 - How the gift is used
 - Changing needs & circumstances

Primary Take-Aways

- Collecting the money is what you're working towards from the beginning!
- Be conscious of your responsibilities to your organization
- Pay attention and ask questions
- Manage relationships with family and advisors
- Don't be scared of a fight

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