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CHARITABLE BENEFICIARIES OF AN ESTATE OR TRUST: *Understanding a charity's rights and the probate and trust administration process*

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I. PROBATE / ESTATE ADMINISTRATION

- ▶ A probate estate of a decedent exists when a person dies owning assets that are held in the decedent's name at the time of his/her death and the assets do not pass to a trust or individual by way of a beneficiary or TOD beneficiary designation.
 - ▶ Assets in a probate estate pass under a decedent's Will or by the laws of intestacy.
 - ▶ Charities may receive assets under a person's Will and this would involve probate or estate administration.
- ▶ Basic Steps in a Probate Case (Estate Administration) -
 - ▶ Open Estate in the County in which the decedent was a resident
 - ▶ Documentation needed to open the estate varies per state but generally need the following items:
 - ▶ Death Certificate;
 - ▶ Information relating to next of kin (could be different than the beneficiaries of a Trust - example if a person dies with step-children then they are legally not the next of kin and siblings and/or parents or other family members may need to be notified even if they are not receiving any assets from an estate);
 - ▶ Assets contained within decedent's probate estate (bank accounts, real estate, stock accounts, motor vehicles, etc.)
 - ▶ If decedent died with a Will (Testate) then the original "wet signature" copy of the Will is needed; if the decedent died without a Will (Intestate) then additional forms may be required. If a copy of the Will is available but it is not the "wet signature" then a hearing may be required as well.
 - ▶ Once an Estate has been opened, Letters of Authority are issued by the Probate Court. This allows the Executor/Administrator to access the accounts held in the decedent's possession. If the decedent died testate then the Executor named in the Will is appointed. If the decedent died intestate then a hearing may need to be held to determine who will be appointed as the Administrator of an Estate.

PROBATE / ESTATE ADMINISTRATION (CONT).

- ▶ Upon Appointment of the Executor / Administrator and the issuance of the Letters of Authority, the Executor / Administrator will open an account at a local banking facility (in the state in which the Probate Court is located) to deposit the decedent's assets and for bill payment.
- ▶ Creditors have six months from the decedent's date of death to file a claim for payment. Sometimes, an estate might not be opened until after six months but a creditor may open an estate for the debtor/decedent during that six month period. Executor may wait to pay debts until six month period lapses to determine the amount of debt (if limited assets).
- ▶ The Executor must hire an appraiser for valuation of assets that may be difficult to value.
- ▶ After all assets have been determined and inventory is prepared and presented to the Court, the Court may schedule a hearing (usually a "paper hearing") to review the assets and approve the inventory.
- ▶ Once all assets have been listed on the inventory and it has been approved, the Executor / Administrator may begin liquidating the assets and/or distributing the assets (i.e. car or home) to the beneficiaries named in the Will or to the next of kin of the decedent died intestate. A final accounting will be presented to the Court with proof of distribution (usually in the way of a receipt signed by the beneficiary acknowledging receipt of the physical asset (i.e. a car) or of the monetary distribution.) The Court will schedule a final hearing to review the Accounting and to approve. Estate is closed after approval by Probate Court.
- ▶ Attorney fees must be approved and generally must fall within a guideline set by the county.
- ▶ If future assets are found after the case is closed, a request will be submitted to the Court to re-open the estate to disburse the newly found assets.

II. RIGHTS OF CHARITY AS BENEFICIARY UNDER WILL VIA PROBATE

- ▶ Through Probate / Will
 - ▶ Executor should notify Charity if named in Will. Ohio law states six months from time of appointment to administer the estate but can file an extension.
 - ▶ Spouse has elective rights which may change amount the others are entitled to under a Will. Charity should request a copy of the decedent's Will (can usually find online in Probate records).
 - ▶ Charity should understand difference between specific bequest of a dollar amount and residuary bequests.
- ▶ Beneficiaries have rights under Will:
 - ▶ Notice of appointment of Executor if the beneficiary is a spouse or next of kin
 - ▶ Notice of the Hearing for the Fiduciary Accountings showing receipts and disbursements
 - ▶ Charity should ask Executor for information - less important if it is a dollar amount. Probate documents are generally easy to access.
 - ▶ Charity may request Probate Court for assets to be distributed to it after five months of executor being appointed.
- ▶ Specific Bequests:
 - ▶ Usually a dollar amount
 - ▶ Paid in cash.
 - ▶ Can be specific assets
 - ▶ Charity does not have to accept gift.
- ▶ Residual Bequests:
 - ▶ Residual bequest is determined based upon what is remaining after payment of debts, taxes, cost of trust / estate administration.
 - ▶ Charity should pay attention to the accounting.

III. TRUST ADMINISTRATION

- ▶ When an individual dies and has a Trust, then trust administration occurs to hold or dispose of trust assets.
- ▶ The Grantor of the Trust names a Trustee (either an individual or a financial institution, or a combination of both using a distribution advisor or investment advisor) to distribute any assets determined by the trust.
- ▶ If a decedent dies with a surviving spouse, (normally) the trust assets are passed to the decedent's spouse with minimal ease. All of the decedent's property held by the Trust, or poured over into the Trust by virtue of his or her Will, is held for the benefit of the decedent's spouse. Most Revocable (A/B) Trusts are divided into Fund A and Fund B. Fund B equals the largest amount that can pass free of federal estate taxes (which is currently \$12,920,000), and the balance, if any, is held in Fund A. In many instances, Fund A and Fund B are held alike, in the sense that the decedent's surviving spouse receives all of the income from this fund until his or her death. Moreover, the surviving spouse is entitled to distributions of principal if he/she needs them for his/her health, support, and maintenance in their accustomed standard of living. Upon the subsequent death of the surviving spouse, the surviving spouse may have the power to direct how the assets remaining in the trust pass among their issue and perhaps charities, but if they do not exercise this power then the trust assets are generally held for descendants. Surviving spouse may be able to appoint to charities under this testamentary power of appointment. Charities could inquire about an individual who inherits assets in trust as to whether the trust beneficiary may appoint to the charity.
- ▶ Charities are frequently named as beneficiaries upon the death of the surviving spouse. This is so that a charitable deduction is allowed to offset any potential estate tax.
- ▶ After distribution of the charitable gifts or other bequests made free and clear outside of trust, then the trustee is usually directed by the trust to hold trust assets for the descendants. Charitable trusts may be created as well.
- ▶ The Trust normally outlines when the Primary Beneficiary will have the ability remove the trustee then serving and become the successor trustee with respect to their share. Every trust is different and will require review prior to any distributions of assets.

V. RIGHTS OF CHARITY AS TRUST BENEFICIARY

- ▶ Beneficiaries typically have rights under the Uniform Trust Code adopted by most states:
 - ▶ Entitled to copy of the Trust
 - ▶ A beneficiary that is eligible to receive distributions must received notice of change in Trustee, change in Trustee compensation and an annual accounting.
- ▶ Beneficiary should review the annual report
- ▶ If there are concerns, Charity should consult an attorney. Statute of limitations may be only 1 year.
- ▶ Beneficiary may be asked to waive rights to annual filings.
 - ▶ Find out Charity's rights. Representatives of charity should not hesitate to ask questions and ask for proper accounting especially if the charity is the residual beneficiary.

RIGHTS OF CHARITY (continued)

- ▶ Transfer on Death to Charity or other Beneficiary Designations
 - ▶ These fall outside of Probate
 - ▶ Executor will need to value for estate tax purposes.
 - ▶ Charities should ask Executor if it is named as a beneficiary of an asset - especially where decedent said they are named.

- ▶ If a Charity thinks it is wronged or harmed, then it may want to enforce its rights.
 - ▶ Litigation is expensive.
 - ▶ Legal fees for Estate/Trust paid out of Estate/Trust assets (in general).
 - ▶ Determine impact on other donations, does family donate, litigation is public.

- ▶ Waivers and Releases
 - ▶ Ask counsel to review.
 - ▶ Do not sign refunding agreements without knowing whether it is appropriate and understand whether charity is asked to indemnify Trustee from liability to a third party.