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Top Ten Estate Settlement Problems and What to Do About Them

Date: April 24, 2025

Time: 1:00 – 2:00 Eastern


Presenter: Andrew Fussner
American Heart Association

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INTRODUCTORY COMMENTS




- Format for today's discussion:
 1. Identify the issue/problem.
 2. Discuss the cause behind the issue.
 3. Suggest some proactive & reactive measures you can take to deal with it.
- Who handles estate settlement at your charity?
 - Level 1: Problems
 - Level 2: Quasi-Litigation
 - Level 3: Litigation
- How often do issues arise?

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PROBLEM #1

THE SLOW-MOVING ESTATE/TRUST ADMINISTRATION




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SLOW MOVING ESTATE ADMINISTRATION


- 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.

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PROBLEM #2

FAILURE TO PROVIDE REQUESTED INFORMATION




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FAILURE TO PROVIDE REQUESTED INFO

- 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.).
- Cite the statute giving you your rights.
- Do NOT 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.

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PROBLEM #3

UNWANTED ASSETS




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UNWANTED ASSETS


- Worthless/Liability Carrying Assets (timeshares, cemetery plots, vacant lots): Disclaim, Disclaim, Disclaim.
- Real Estate: Sale to Neighbors / Courthouse Auctions.
- Oil/Gas Royalty Interests: EnergyNet.Com, Highground Advisors, and similar services.
- Tangible Personal Property: E-Bay, E-Bay dealers, Facebook marketplace, & event auction.
- Pawn it off on someone else.
- Avoid fractional interests / co-ownership.

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PROBLEM #4

EXCESSIVE OR HIGH FEES




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EXCESSIVE OR HIGH FEES

- 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 and tasks done.
- Complain (but do a cost-benefit analysis first – is it worth it).
- The all-time best excessive fee story ever.

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PROBLEM #5

WILL & TRUST CONTESTS




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WILL & TRUST CONTESTS


- 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 are 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.

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PROBLEM #6

DETERMINATION OF BENEFICIARY ISSUES




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DETERMINATION OF BENEFICIARY ISSUES

- Most popular flavors: (1) the misnamed charity and (2) successor-in-interest/merger problem
- Keep a history of cases 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.

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PROBLEM #7

THE INTERVENING CONTINGENCY YOU MUST MONITOR FOR YEARS




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THE INTERVENING CONTINGENCY

- 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 is responsible for what.
- Confirm annually that the contingency has not occurred (i.e., Is that guy still alive?).

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PROBLEM #8

AFTER-DISCOVERED ASSETS



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AFTER-DISCOVERED ASSETS

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

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PROBLEM #9

THE “RESTRICTED” UNRESTRICTED GIFT



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THE “RESTRICTED” UNRESTRICTED GIFT

- 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.

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PROBLEM #10

THE SPECIAL REQUEST – COMPLETE WITH SOB STORY



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THE SPECIAL REQUEST


- Examples: the heir in need, donating to a memorial, unique “final” costs.
- Private benefit – “The IRS will not let me.”
- Create a united front with the other charitable beneficiaries and speak with one voice.
- Find a way to recognize within your organization that does not affect your bottom line.
- As always, do a cost-benefit analysis.

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FINAL POINTS WORTH REMEMBERING

- Just because you are a charitable beneficiary does not mean you do not have the same rights (and responsibilities) as any other type of beneficiary.
- Making sure the deceased donor’s wishes are properly honored does not ever make you ungrateful for the gift they have bestowed upon your organization – it means you are honoring their last wishes.




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Questions?




Click the Q&A icon at the bottom of your screen.

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Still Have a Question?

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