Your Trusts and Estates Matter Could Trigger a Lawsuit: 6 Strategies for Preventing Disputes in California

Every trusts and estates lawyer knows that while a client may come to you with a single issue to resolve or a seemingly straightforward change, it's impossible to complete that task in a vacuum. In this area of law, a joint tenancy transfer is never just a joint tenancy transfer, and a gift from parent to child is so much more than a nice gesture. Tweaking those singular threads of an estate can change the whole tapestry, potentially reshaping tax liabilities, disrupting residuary distributions or triggering unintended legal consequences.

Much like a thunderstorm on a wedding day or a mosquito in your bedroom, litigation tends to be unwelcome among families with assets, legacies and relationships to protect. By ensuring you have a holistic understanding of the estate's interconnected pieces from the outset, you can help your clients avoid far-reaching — and expensive — repercussions.

1 Explain the plan to its beneficiaries

It's often easier said than done, but discussing an estate plan with those affected by it can alleviate much of the surprise and upset that triggers litigation down the road. Many post-death disputes stem from clients avoiding conflict and other difficult conversations while they're still alive — and that's understandable.

The fact is, though, disclosure is one of the most effective ways to identify, confront and defuse issues with the potential to become litigation. It's a little like reading that passive-aggressive email you interpret as a personal attack — until you sit down, talk to the person and realize it was not intended that way at all.

Whenever possible, explain the estate plan and its rationale to the potential beneficiaries. This also helps demonstrate that the client made the decision themselves, avoiding future allegations that they were tricked, forced or somehow mistaken. Likewise, when managing the affairs of someone with declining physical or mental health, disclose the plans to more distant relatives and potential claimants to avoid bad blood or suspicion down the road.

One way to do this is via a family meeting. When your client shares their wishes and explains why they chose a certain plan, it can help everyone understand and accept the outcome. It also shows that your client was clear-minded and not pressured by anyone. If emotional outbursts or confusion are expected, you can serve as a moderator by providing a forum for sensitive disclosures and explaining unequal distributions or complex legal and tax nuances. The meeting will also give heirs the opportunity to explain why a particular approach might be incorrect, allowing it to be fine-tuned before the client's death.

2 Leverage no-contest clauses as settlement vehicles

When anticipating dissatisfaction among heirs, no-contest clauses can be a powerful litigation prevention tool. This way, if an heir challenges the will, they put everything they were left at risk if they lose the dispute. The idea is to leave the beneficiary enough in the will that they'll think twice about challenging it.

This clause should be discussed early and often, including at a family meeting. While it won't always stop a lawsuit, a no-contest clause can streamline the process by giving a clear limit for any settlement.

Pay close attention to the wording of no-contest clauses, ensuring it covers any potential challenges and anyone who might indirectly assist with litigation, financially or otherwise. If a second spouse could challenge the will, the clause should include claims to community property, pensions and personal property, and the will should clearly label property as separate or community.

The clause shouldn't go too far, however. If it disinherits the challengers completely, that part of the estate could then pass to others by default, which the challengers could still inherit.

3 Consider exerting financial pressure — but tread carefully

If there are significant concerns over the potential for disputes after a client's death, there are various ways to exert financial pressure and avoid unnecessary litigation. However, these should be employed with caution. It is important to explain to your client that strict or harsh trust terms can create resentment and damage their legacy within the family, perhaps leaving a negative impression for generations.

Some options may include:

- **Conditional gifting:** This links a beneficiary's inheritance to certain behaviors or outcomes (for example, avoiding alcohol or tobacco, using a specific surname or raising children in a certain faith). This option is often seen as somewhat draconian, so it should be used carefully and with clear terms.
- **Blocking income or remainder interests:** You can give a trustee the power to cut off a beneficiary's income or remainder interests if they challenge the surviving spouse's inheritance. Here, it's crucial to select a trustee who is fair and won't be easily swayed by infighting.
- **Using trust funds to defend challenges:** This provision allows defense expenses to be charged to the shares of the beneficiaries involved.

4 Use the signing ceremony as an opportunity to defend the document

The signing ceremony is not just a rubber-stamping moment; it's a key opportunity to bolster your client's estate plan from claims such as incapacity and undue influence. If your client is suffering from illness or the effects of medication, ensure the ceremony is arranged at a time when they are most alert.

Choosing the right witnesses is crucial. They should be credible and able to assess your client's mental capacity and independence. They should also ideally be young enough to testify if needed later. With the client's permission, witnesses can be briefed on the estate plan and potential family dynamics. Witnesses should also understand the client's intentions and reasoning behind their decisions.

In addition to neighbors and close friends, treating physicians can be **effective witnesses to your client's capacity** — but be sure to explain what constitutes testamentary capacity as this differs from medical or conservatorship standards.

At the ceremony, summarize the key parts of the plan and explain the reasons behind certain gifts, with your client adding comments when possible. Consider preparing a rough script or guide to help you track the signing steps, and if the documents are complex, provide a brief summary to witnesses beforehand that they can use as a checklist.

5 Leverage probate of will for estopping challenges to a trust

An inter vivos trust paired with a pour-over will can also discourage legal challenges. As the capacity required to create a will is lower than for a trust, probating the pour-over will — typically overseen by a judge — can block challenges to an inter vivos trust created at the same time. To strengthen this defense, include the trust's terms in the will so they are validated even if the trust has issues. This approach also reduces the chance of jury involvement in disputes over the estate plan.

6 Frequently amend the document

When someone challenges a will under California law, courts must evaluate the most recent version before any earlier documents can be considered. This means that if wills and trusts are frequently updated or amended, challengers will have to contest them one by one. Ensure that the most recent document reaffirms the terms of the previous document that haven't been revoked.

Estate planning as a dispute-avoidance tool

Effective estate planning — especially for high-net-worth individuals and families — is all about proactively managing potential conflict. Attorneys who treat this process as an opportunity for litigation avoidance will better serve a client's interests. By carefully considering these interdependencies and potential repercussions, you can help safeguard your client's wishes and keep them or their loved ones out of costly and contentious litigation.

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