

Estate Planning Tips To Avoid Estate Litigation

Presented by Eric W. Penzer

➤ Introduction

○ Types of Estate Litigation

- Contested Probate Proceedings
- Contested Accounting Proceedings
- Litigation Concerning Lifetime Transfers
 - Gifts
 - Joint Accounts
- “Family Business” Litigation

➤ Contested Probate Proceedings

○ Who can object to probate?

- Tips to minimize class of potential objectants
 - Prenuptial Agreements
 - Destruction of Prior Wills

○ Grounds for objections

- Lack of testamentary capacity
- No due execution
- Undue influence

- Fraud/duress
- Overview of procedure for probate contest
 - Pre-objection discovery (SCPA 1404)
 - Objections
 - Discovery
 - Dispositive Motion/Trial
 - Appeal
- Tips for avoiding a will contest
 - Recognize the signs
 - Divorce and remarriage
 - Unequal treatment of siblings
 - Testator suffering from diminished capacity or a chronic illness
 - Avoiding/defeating a capacity-based objection
 - Attorney due diligence
 - Care in developing the testamentary plan
 - Consider the form of the instrument
 - Avoiding/defeating a due-execution objections
 - Involve a lawyer
 - Choice of Witnesses

- Avoiding/defeating an undue influence objection
 - Conversations with the testator concerning the underlying rationale for the testamentary plan
 - Direct contact with client
 - Generic tips for avoiding a will contest
 - Conversations With Family Members
 - Family dialogue
 - In Terrorem Clauses
- Contested Accounting Proceedings
- What is an accounting proceeding?
 - Tips for avoiding litigation
 - Choice of Fiduciaries
 - Informal disclosure
 - Paper the file
 - Rely on professionals
- Litigation Concerning Lifetime Transfers
- Gifts
 - Procedural context

- Elements
 - Donative intent
 - Delivery
 - Acceptance
- Burden of proof
- Defenses
 - Capacity
 - Undue influence
 - Fraud
 - Duress
- Evidentiary hurdles
 - Dead Man's Statute (CPLR 4519)
- Presumptions
- Tips for avoiding litigation
 - Involve a lawyer
 - Involve an accountant
 - Gift tax returns
 - Disinterested witnesses
 - Writing

- Joint Accounts
 - Banking Law 475 presumption
 - Rebuttable presumption that parties to a joint account are entitled to an equal share of the account
 - Tips for avoiding litigation
 - Disinterested witnesses
 - Writings

- Family Business Litigation
 - Tips for avoiding litigation
 - Attorney review of corporate governance and operational documents
 - Consider alternative bequests
 - Testator should consider whether non-active children should be owners of business
 - Implement distribution policy
 - Implemental information distribution policy

- Conclusion/Questions

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