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ESTATE PLANNING LIBRARY

Number Seventeen

Legal Challenges to Your Estate Plan

1. Why would someone challenge the design of my estate plan?

It is not a frequent occurrence, although today's generations of children are more litigious than in the past. Probably too many lawyers looking for work. Seriously though, there are circumstances that can occur wherein a legal challenge to your estate plan is more predictable than others.

2. Will you give me some examples?

Of course. The events that are most likely to cause a legal challenge to your estate plan are:

a. Powers of Attorney:

According to a probate Connecticut judge who has set for over 16 years and seen thousands of cases, the most common cause of legal challenges is a child of the deceased having held a power to attorney.

b. Disinheriting a Child:

In my experience, the disinheritance of a child is the number one reason for a challenge to an estate plan. The child is typically hurt because he or she feels "left out," angry because his or her siblings were treated better and embarrassed because the whole family knows that he or she was disinherited. This is another reason to avoid probate, how would you like the world to know that your parents disinherited you. These strong emotions, coupled with a perfectly natural desire for an increase in financial well-being inevitably cause problems and sometimes generate a lawsuit against the trustee, the other children in the family. General, will this destroy any remaining family relationships with the disinherited child.

c. Failure to Save Otherwise

Avoidable Estate Taxes:

Legal challenges against the estate-planning attorney who prepared the estate plan are becoming more and more frequent. Part of this is the explosion in estate planning articles in the popular press. This factor has informed many children of the techniques available to reduce otherwise payable estate taxes. They anticipate that their parents are taking advantage of these advanced planning techniques simply because the parents have gone to an estate planning attorney. However, some clients do not want the sophisticated detail and/or costs of an advanced estate plan.

When the surviving parent dies and the, otherwise avoidable with advanced estate planning, estate tax bill hits home, the children go in search of a lawyer to sue the estate planning attorney that implemented the plan. It is hard for the children to understand that this is the estate plan the parents wanted, not the one the estate planning attorney wanted.

Children frequently have difficulty believing that the parents left them a large tax bill as part of their inheritance. Essentially, the estate planning attorney now has to prove to the children's lawyer that the clients did not want to take advantage of the benefits of advanced estate planning techniques. Sometimes this is easy, sometimes it is hard. It has become our practice to send all of our clients, with a return copy to me, a letter that summarizes the most common advanced estate planning techniques and have them sign that they were told but declined to use any of the techniques. I keep this letter in the file and show it to the children's lawyer. This generally stops the litigation immediately.

Powers of Attorney, the disinheritance of a child and a failure to avoid otherwise avoidable estate taxes are the number one, two and number three reasons for a legal challenge to the estate plan adopted by parents.