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YOUR NAME HERE



Most of the time our wills and trusts aren't controversial, or at least we don't think that they are. We might leave amounts either outright or in trust for our surviving spouse and then when we're both gone it all goes equally to our children.

But sometimes it isn't so straightforward. We might be in a second marriage situation. In that case, we could decide to leave amounts in trust for our surviving spouse and then when he or she dies the remainder of what is left is destined to be distributed to our children. But every dollar that the surviving spouse spends is one less dollar that our children will one day inherit. Because he or she has only a step-relationship to our biological children, things could get a little testy when it comes to our money and assets.

Another instance is where we want to disinherit a child or other loved one. Perhaps the child has had alcohol or drug dependency problems that leave us afraid that when we die the child will squander their inheritance on booze or illegal substances. Or perhaps there has been a dispute in the family that has become irreparable. You'd rather leave the inheritance to the ones that you share a close relationship with, or skip the child entirely in favor of the grandchildren.

When we have more delicate interpersonal relationships that are going to affect our estate planning, it is imperative that we get the intent documented. It might be written inside of the will or trust itself, including the reasoning behind the bequests or lack of bequests. Or, sometimes it will make sense to write a separate letter explaining why we are choosing to do what we do.

Absent a clear narrative of our intent, others might try to fill in the gaps after our deaths as to why we did what we did. They could claim that we weren't in our right mind when we left such large amounts to our second spouse, or wrote the child out of the document.

Another popular challenge to a will or trust is the claim of undue influence. The complaining party could file a court action declaring that absent the influence of a party who otherwise benefited from our action, then we wouldn't have written the will or trust the way that we did.

Aside from worrying about challenges to the legal documents themselves, we have to guard against challenges to the way that our wills or trusts are administered following our passing. Allow me to explain by example.

Suppose that Bob leaves amounts in trust for his second wife, Mary. Mary is to receive the income from the trust for the remainder of her life, and she can take principal from the trust if the income is insufficient for her health, maintenance and support.

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Suppose that Mary needs a new car. She withdraws amounts from the trust to pay for it. What if one of Bob's children challenges the withdrawal? The child says that Mary could have bought a less expensive model or even a used car. This would have preserved more of the trust for the children to inherit once Mary dies. What happens now?

Imagine that Bob included language in his trust that says this: "During Mary's lifetime, Mary shall be the primary beneficiary and her needs should be first considered notwithstanding the effect that it may have on the inheritance of my children." Doesn't that kind of language strengthen Mary's position?

Now instead let's add a scenario where Mary has plenty of her own assets. Bob still wants the trust to pay her income, but she should only invade the principal if she doesn't have sufficient assets of her own. Now Bob's trust reads: "During Mary's lifetime, the Trustee shall pay Mary the income from my trust. The trustee may also pay Mary from the principal of my trust for her health, maintenance and support, but in so doing the Trustee shall first consider Mary's other assets, income and resources available to her for such purposes."

Do you see how the two different provisions give all of the parties more clear direction on what Bob wants the trust to pay for and what Bob doesn't want the trust to pay for? Can you also see how each one of the provisions gives more specific direction than a generic clause that says: "pay Mary the income and principal that she needs for her health, maintenance and support."?

Statements of intent go a long way to not only thwarting a challenge to your estate planning documents in their creation, but also in providing clear direction to your loved ones which should result in warding off conflict between them.