

Beyond Basic Bequest Administration

(aka Bequests Gone Bad)

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A non-lawyer's practical guide to handling matured bequests, particularly problematic bequests

Presentation will include:

- what to ask for and when
- what to do if your request is ignored
- how to spot problems on accountings and tax returns, including avoiding income taxes
- effectively collecting IRAs/life insurance/POD accounts
- how to (politely) decline a request to return your bequest
- when to join in/sit out litigation with or without an attorney

Samples of suggested letters, tax code citations, tax and probate forms will be included.

The basics: What to Ask for & When..

In order to effectively administer a gift from a Trust or Will, you need to see, at a minimum:

- A copy of the paragraph of the Will or Trust (or beneficiary designation form) which mentions your organization.
- An accounting for the estate or trust, whether formal or informal:
 - **Formal accountings are filed in probate estates because they are reviewed by the Court**
 - **Informal accountings usually consist of:**
 - The date of death balance of the assets
 - The itemized expenses/income during the administration
 - The amount remaining to be distributed to the beneficiaries

What if the answer is “no”?

- The “manna from heaven” argument
- The probate court is your friend
- The Web is your friend
- The Social Security death index is your friend
- The Trustee/Attorney/Stockbroker/Trust Officer/ MAY be your friend

Reviewing Accountings

- Accounting 101
- Brokerage statements
- The dreaded Form 706
- The incomprehensible 1041

Collection of non-probate assets (IRAs, life insurance policies, 401Ks & Payable on Death Accounts)

- Impact of the Patriot Act
- When you're stuck in no man's land
- Tax withholding avoidance

Uh oh, someone wants the money back

- The family wants the money back for good, bad or indifferent reasons:

The tax code section that will help you
The polite and apologetic letter of refusal

- The estate/trust attorney wants the money back because he or she cannot add, subtract and/or read properly:

Documentation needed
Is there room for negotiation?

Litigation: How do I know I need a lawyer?

- Assessing your risk
- Pro se – representing yourself
- If an attorney is not in the budget
- Joining forces with others
- Don't be an ostrich and lose everything
- Be **BOLD** – almost everything is negotiable – the donor intent “wildcard”

Stories from the trenches:

1. LESSON: Apportionment matters!!
2. LESSON: Always question accountings and apply the reasonableness standard.
3. LESSON: Using legal counsel.
4. LESSON: Negotiation and obscure wording.
5. LESSON: Always ask for what you need whether someone is delightful or angry – either type can make a mistake or worse.

QUESTIONS??

Sample Documents

The following documents are available in the appendices of the attached handout.

- **APPENDIX A: Sample Initial Letter**
- **APPENDIX B: Private Inurement Tax Citation**
- **APPENDIX C: Private Inurement Letter**
- **APPENDIX D: Sample Accounting**
- **APPENDIX E: 1041 Tax Citation**