**Q&A – Top Ten Estate Settlement Problems and What to Do About Them, 4/24/25**

*[Note: Some questions have been edited slightly.]*

**Q: What if a trust provision limits the accounting to be provided to beneficiaries to only trust tax returns (i.e., IRS Form 1041/706)?**

A: First, I would say that this is a very rarely seen provision in a trust instrument. Second, the answer may in part depend on whether state law permits a trustor to limit the trustee's duty to account (generally not the case in most states). Third, I would argue that a tax return generally does not comply with the requirements of most state trust/probate accounting requirements as it does not provide enough details as to what has come in as receipts/income, what has been paid out as expenses/distributions, what gains/losses on sales of assets have occurred, what changes in asset valuations have occurred, and what assets are on hand at the end of the accounting period. I would ask to see a copy of the tax return AND at least get some type of informal accounting.

**Q: What about stock that does not have a public market for trading? We were recently notified that our organization is the beneficiary of this type of stock through a deceased donor's estate. They want to transfer the stock to us rather than trying to sell it and send us the proceeds.**

A: Before accepting any closely-held stock in-kind, I would want to see (a) the shareholder's agreement, (b) the Articles of Incorporation and By-Laws of the company, (c) the most recent financial statements, (d) the most recent Board Meeting minutes, (e) the most recent corporate tax return, and (f) a history of dividend distributions. Additionally, I would try and see if I could obtain a list of the shareholders and inquire about when the next shareholders' meeting was going to occur. Requesting all these things indicates that you are likely to be a pain in the side of a company that does not buy your charity out – which makes getting an offer much more likely. Even if you are not successful in getting an offer of purchase, at least you will know to whom you can sell your shares, who the likely buyers are, and what your voting & other rights are as a shareholder. Lastly, if you do have to take it in-kind, make sure the proper transfer documentation is completed and recognized by the company.

**Q: When looking for unclaimed property from an estate, should we look under the decedent's name or something else?**

A: If the estate is still open, look under the decedent's name – as at that point in time, the only unclaimed assets will be assets passed over to the state while the decedent was living. Let the attorney/PR/trustee know about anything you have found as soon as you find it. You can look under your charity's name (try different variations and abbreviations depending on the search parameters permitted), but typically any property (except for beneficiary-designated assets) is still going to be under the name of the decedent. When that is the case, you as the charity generally are not permitted to claim it. In that case, an executor or trustee would have to file the paperwork (which entails reopening a probate) and that is where the "asset finder" companies come into play.

**Q. Do you revise indemnification and any other language on Receipt and Releases as a standard practice?**

A: Yes, we do. There are several things that we are looking to avoid. First, any open-ended indemnification clause where we would be liable for amounts above-and-beyond what was distributed to

us. Second, if a refund of any type is required, we only want to be liable for our pro-rata share of that refund. Third, we do not want to agree to a general release that gives an executor or trustee "carte blanche" to mislead us. This last one is only a problem in California where it seems to be the practice to include what is known as Section 1542 language in the Release. Immediately below are the guidelines I ask my bequest staff to follow.

Indemnification

1. strike out "joint and several" if those words appear in the section.
2. add-on wording at end of indemnity clause – "Provided, however, that Beneficiary's liability pursuant to this paragraph/section shall not exceed the amount of the distribution received by the Beneficiary. Further, Beneficiary's obligation to indemnify or refund shall not exceed the Beneficiary's pro-rata share of the obligation."

Section 1542 language

1. eliminate entirely [unless part of a negotiated settlement agreement following litigation]. This is specific to California only.

General Release

1. strike out phrases around the word claims such as "known or unknown, suspected or unsuspected" if those words appear in the section.

**Q: Are you still having to give your personal info (i.e., SS#) to claim IRA assets?**

A: Yes and no. While some financial institutions are now much better about not requiring such personal details as social security number, driver's license number, home address, and date of birth, that is by no means universal. FinCEN (the Financial Crimes Enforcement Network – a government agency) issued a ruling that basically said that a financial institution is not required to open a new account to distribute such funds to a charity, but *if* it chooses to do so, it *must* obtain KYC (Know Your Client) information, including the social security number of an individual that works for or is on the board of the charity. Unfortunately, because many financial institutions' internal systems are set up this way, it is much easier for them to require a new account being opened. The RIFT project has a great resource at https://charitablegiftplanners.org/ira-distribution-resource-center for more information on this topic.

**Q: I sent a letter of instruction along with the paperwork explaining why we can't submit a death certificate (we know nothing about the decedent - so we have no way of getting one) and have been told we wouldn't receive our distribution until we provide it. What do we do next?**

A: Unfortunately, this is too common of a problem. It is especially frustrating because it is the insurance company or financial institution that informed you of the death in the first place! My first piece of advice is to send in your paperwork anyway – even if they are asking for a death certificate and you do not have it. There is a chance that another beneficiary may provide a death certificate, and your problem is generally solved. As we discussed on the call, there are a variety of ways to go about obtaining a death certificate, depending on what type of details you know about the decedent. Going to www.vitalchek.com allows you to order a death certificate depending on the information that each individual state requires. It may require some sleuthing on the Internet to find certain things out, such as the exact date of death and the county of death. We have found that an Ancestry.com account is worth the subscription, not only for obtaining details in this regard, but for a variety of other data that we want to be able to track on decedents (i.e., date of birth, last known address, etc.).

Other potential ways to track down a death certificate include searching for a probate for the decedent and seeing who the attorney or other parties of record are, contacting a funeral home listed in an obituary for the decedent, and reaching out to known family members. A last-ditch effort may be to ask to speak to someone in the legal department at the institution asking for the death certificate and explain why you can't provide one without more information and subtly mention that you'd hate to get the press involved in a story where the big nasty insurance company is withholding an individual's charitable legacy.

One of the participants on the call mentioned that "if you have a death certificate you can search for a life insurance policy for the decedent at https://content.naic.org/article/naic-life-insurance-policy-locator-helps-consumers-find-lost-life-insurance-benefits."

**Q: When you said 3% is a "good" fee - 3% of what? The gross estate? What if there is one asset of a home valued at $3 million. My organization is 100% beneficiary. Does the trustee get $90K for hiring a real estate agent and that's all?**

A: In the case of a probate, it would be 3% of the *probate* gross estate. In the case of a trust, it would be a percentage of the *trust* gross estate. Generally, any assets passing outside of probate or a trust (such as a beneficiary designation) are NOT included in the fee because the executor, trustee or attorney has next-to-nothing to do with claiming them. Hence, the "gross-gross estate," as it would be defined for estate tax purposes, is almost never the basis for calculating a fee.

As to your situation, assuming the house is titled in the trust, I might not decide to push back on a fee of 3% or less (although I'd be more likely to in a trust situation than in a probate situation), even knowing that seems like a pretty ridiculous fee on the surface. It really depends on the customary practice and any fee statute in the state in question.

Two things to remember. First, the fee is not just for "work performed" as an executor/trustee, but also because there is liability/risk that being an executor/trustee technically exposes one to. Second, in states where there is a set fee schedule, by staying at or under the stated percent, an executor or trustee typically gets a presumption of reasonableness for their fee. That means that the burden of proof is on your charity, as the beneficiary, to prove it is not reasonable (as opposed to when the executor/trustee is charging more than the statutory stated amount and the burden is on them to prove their fee is reasonable).

Lastly, in the case you mentioned, especially as it is a trust, I would reach out and ask exactly what the trustee had to do to earn his/her fee before blindly acquiescing to it. There might be more than you realized (i.e., preparation of tax returns, cleaning up a hoarder situation in the house, etc.). As the sole beneficiary, this may be a situation where it *does* make sense to push back or fight a 3% fee – as the benefit likely outweighs the cost. If you were a 10% beneficiary, that might not be the case.

**Q: I'd like better clarification on how to find out if you have been named a beneficiary for a 401k or IRA.**

A: When talking about a 401k or an IRA, you are pretty much at the mercy of the financial institution to notify you that you have been named as a beneficiary. Unfortunately, there is not a resource that one can go to that lists such beneficiaries, even on accounts where the holder is now deceased.

That being said, if you've been told by a donor that your charity was named as a primary beneficiary (and not as a contingent beneficiary) and you haven't heard anything for many months after the death of the

donor, I don't think it is wrong to reach out to the attorney of record or the executor on an open estate for the donor (assuming you can find one online or via some other means). I have found attorneys are generally helpful if I respectfully contact them and say something like…

"I found that you were the attorney of record on the probate of Joe Donor. While Joe was alive, he shared with my charity that he had named us as a beneficiary of his IRA. While I realize this does not pass through probate, as it has been six months since he passed and we have not heard from any financial institution, I thought I would reach out to you to see if you had any information you could share with us. I realize that donors do sometimes change their plans or that we may have been named as a contingent beneficiary, so I am just hoping you can provide some clarity before I go off on a wild goose chase trying to track this down."

**Q: Could you share your template for an informal accounting information request?**

A:

**_____ TRUST – INFORMAL ACCOUNTING**

Total Trust Value (prior to any distributions): $_____

Less Trustee Fees: $_____

Less Attorney Fees: $_____

Less Other Costs/Expenses: $_____

Less Specific Gifts: $_____

Net Residual Available for Distribution: $_____

American Heart Association Interest: _____%

American Heart Association Share: $_____

X_____ _____

Trustee Date

Print Name: _____

**Q: One last item that I received via email (and was not in the chat) related to comparable questions about tracking down a will/trust bequest when the donor was known to be dead, but no notice has been forthcoming after an appropriate period. Here was my response, which I believe includes a good reminder about the viability of Planned Gift Commitments in general…**

A: It sounds like you have done about everything you can to run that one down. Usually if it has been a year and there is no probate open – there will not ever be. That could be because all the assets passed via trust or beneficiary designated assets (and your charity was not named in either).

I would be interested to know how long ago the donor told you that your charity was included. If it was just months before her death, then I would try to think of some other ways to check if there was a gift. If the donor notified you five or more years ago, it is likely just the case that the donor changed her mind and her will. The "dirty little secret" of planned giving is that a sizable percentage of planned gift commitments simply fail. If you've ever seen any of Professor Russell James' studies, depending on the time between notice of the gift commitment and death, failure rates can run from 40% to 60% (which has been the experience here at the AHA, but probably is different [lower failure rate] for a smaller charity or university).

I have theory why our failure rate is so high, and it is because a decent number of our gifts are what I call "raise your hand and identify" gifts. We send a mailing out and there is an attached buck-slip where the donor can check off a box that says, "I've included the AHA in my Estate plan or Will." Donors check that box off thinking, "yeah, the AHA *is listed* in my will." However, it is listed as *a remote contingent beneficiary* and the AHA collects *only if* everyone and their brother dies before the donor. There is zero incentive for our planned giving staff to dig down too deeply on those, because if they find out it is contingent, they lose the gift commitment credit that's part of their performance standards. But that is just my working theory!

The only other thing I can think of that you might want to try (and I have never done this), is to see if you can find an obituary and determine what funeral home handled the burial. Maybe you will get a sympathetic ear on the line, and they can tell you if they provided any death certificates to an attorney's office or an executor. Alternatively, there might be survivors' names in the obit that you could reach out to and ask (that is a bold move though and could get taken the wrong way if you are not careful). Either is a hail-mary pass though. If there are living children or grandchildren listed in the obit – then I am betting it is a case of your charity being a contingent beneficiary after all.

*Note*: Part of my job at the AHA is "matching" planned gift commitments with our matured bequests. When our CRM system tells me we have a deceased donor who had a planned gift commitment and there's no corresponding actual bequest, I give it a full year before declaring it a "failed gift commitment" (and I also make sure that there isn't a surviving spouse or some other contingency that has to occur before we get our bequest). One of the things I always do is try and find an obituary online for the donor. First, that is to confirm that the donor really is dead (and not just marked deceased because some automated death overlay confused someone with a similar name). Second, on the planned gift commitments that have "failed," in about nine out of ten times, the obituary lists surviving children of the donor – more proof that our planned gift commitment was really a contingent gift all along.