Bequests Gone Bad: Ten Ways to Lose Your Charitable Bequest

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American Heart Association

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Agenda

- Purpose: Avoid years of careful cultivation, stewardship, and expense from going down the drain.
- Some of these obstacles happen before the donor passes away and others occur after the donor passes away.
- In both cases, there are some things a charity can proactively to avoid the obstacle and reactively to deal with the problem once it has arisen.

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1. The Misnamed Charity

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1. The Misnamed Charity

- Proactive
  - PG Staff should be sharing "suggested wording" using the legal name and EIN for the charity.
  - Charity's website should contain legal name and EIN.
- Reactive
  - Provide supporting documentation to estate/trust.
  - Petition to Determine Beneficiaries.
  - Know the merger history & name change history of your organization.

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2. Handwritten Changes to Documents

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2. Handwritten Changes to Documents

- Proactive
  - PG staff should be talking to donors about the dangers of making their "own" changes to legal documents.
  - Get some horror stories from whomever handles your bequest administration.
- Reactive
  - Get copies of the current document AND prior documents, if any.
  - Compare handwriting of the donor between documents.
  - These are always good cases to settle.

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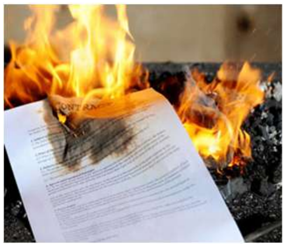
3. Lost or Destroyed Will/Trust



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3. Lost or Destroyed Will/Trust

- Proactive
  - Encourage donors to keep their documents in safe deposit box or other secure location.
  - Get the scrivener's name and contact info if the donor is willing to share.
- Reactive
  - Contact the scrivener (if known) right away.
  - Get copies of any prior documents.
  - Attempt to admit to probate a copy of the Will (but understand there will likely be a presumption working against you).

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4. Bequest in Will – No Probate Assets

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4. Bequest in Will – No Probate Assets

- Proactive
  - Talk to donors about how assets are titled – and how that has the potential to mess up or alter their finely crafted estate planning.
  - Talk about "convenience accounts" versus true "joint accounts".
- Reactive
  - If possible, do a little digging to find out who/how assets were retitled.

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5. Caretaker Claims

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5. Caretaker Claims

- Proactive
  - Listen carefully and document what donors say about their caretakers.
  - Encourage the donor to document in writing any promises made (or not made) to the caretaker regarding the caretaker's compensation.
- Reactive
  - Look for unusual expenses on accountings.
  - Demand the executor/trustee request supporting documentation from a caretaker seeking reimbursement for services rendered (i.e., time logs, receipts, contracts, etc.).

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6. Lack of Testamentary Capacity

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6. Lack of Testamentary Capacity

- Proactive
  - If there are concerns, encourage the donor to visit his/her physician around the time of document execution.
  - If there's a high probability of a contest, videotape the execution (just do not do it yourself or otherwise be involved).
- Reactive
  - Do not just roll over when such a claim is presented – hire an attorney and partner with other charities named in the instrument.

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7. Undue Influence

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7. Undue Influence

- Proactive
  - Keep detailed records of any interactions with relatives or caretakers that seem suspicious; if necessary, contact local senior protective services.
  - Do not do anything that might get YOU accused of undue influence (i.e., driving donor to attorney's office, witnessing the donor's documents, helping them fill out a Beneficiary Designation form online, etc.).
- Reactive
  - Don't just roll over when such a claim is presented – hire an attorney and partner with other charities named in the instrument.

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8. Tax Apportionment Bites Into the Apple

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8. Tax Apportionment Bites Into the Apple

- Proactive
  - Talk to donors about the implications of tax apportionment clauses in their documents when they have both individual and charitable beneficiaries.
  - Have a general understanding of what states have their own estate tax or inheritance tax laws.
- Reactive
  - Review the document's language and the accounting closely to make sure taxes were properly allocated.
  - In matters with just charitable beneficiaries, there usually shouldn't be 1041 federal income taxes paid.
  - Be aware if IRAs, U.S. Savings Bonds, or similar assets are left directly to the estate or trust – the fiduciary may be able to file for a refund if withholding was taken out prior to distribution.

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9. The Non-Enforceable Directive to Give

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- Proactive
  - Talk to donors about the implications of giving a fiduciary discretion to make distributions v. directing distributions.
  - Understand how a bequest made to a DAF, private foundation, or community foundation impacts your rights as a beneficiary.
- Reactive
  - You may have to treat the fiduciary as a grant-maker and act accordingly.
  - If possible, get a copy of the governing instrument.

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10. Unfulfilled Charitable Pledge at Death

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10. Unfulfilled Charitable Pledge at Death

- Proactive
  - Include language in any pledge agreement that the donor intends the pledge to survive their passing and that any unpaid amounts should be treated as a valid claim against their estate.
  - Potentially request that a donor have similar language included in their Will or Trust.
  - Make it clear in any documentation if a bequest is intended to fulfill an outstanding pledge or stands alone.
- Reactive
  - Notify the attorney/executor ASAP if your charity has an outstanding pledge.
  - File a claim in the probate case (often can be done without a lawyer's assistance), even if you don't have "detrimental reliance" or a pledge with "survives death" language in it.

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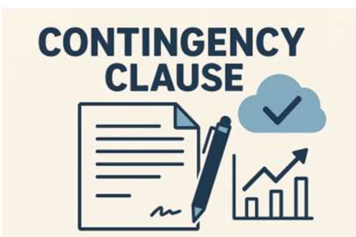
BONUS: Charity is Contingent Beneficiary



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BONUS: Charity is Contingent Beneficiary

- Proactive
  - Clarify a donor's bequest intent. Is the charity just a backstop/in a failure of beneficiaries clause?
  - Be wary of response cards that simply say, "I've included XYZ Charity in my estate plans."
- Reactive
  - If you can find or know who the fiduciary/attorney for a deceased donor, don't be afraid to ask why the charity didn't get notice or was excluded.
  - Read the donor's obituary – if the donor had surviving children (or maybe a new spouse you were not aware of), you were probably a contingent beneficiary all along.

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Questions?

Click the Q&A icon at the bottom of your screen.

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Still Have a Question?

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