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TRUST & ESTATE

When fair shares feel unfair in estate disputes

Disputes often arise in estate distributions involving real property, unequal bequests, or conflicting documents, making it essential for attorneys to anticipate complications and guide clients through both the legal and emotional complexities following a loved one's death.

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The simplest distribution circumstances that are least likely to foment dispute following a testator or trustor's death typically occur when (1) there is a sole heir or beneficiary, or (2) if there are multiple heirs or beneficiaries, there is an equal distribution of cash or assets liquidated to cash. While these distributions can still result in disputes or contests, this article provides a high-level overview of a selection of more contentious situations a family and their attorneys may face following the death of a loved one.

Unequal distributions

The Family Home: The quintessential problem with distribution to multiple heirs or beneficiaries involves the family home. This problem is made simple if the house is sold and the proceeds are distributed equally. However, if one or more of the heirs and beneficiaries want to receive the house as an in-kind distribution, the following issues arise: (1) Who will reside in the house; (2) if no heirs or beneficiaries reside in the house, how is the fair market value of the interest being sold determined, and/or (3) how is the real property distributed.



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(1) On grief and fairness.

Grief is not a universal experience and fairness is often subjective. As such, neither abstract concept tends to push a family towards resolution when it comes to who gets to reside in the home, particularly where the will or trust is silent.

(2) Appraisals and valuations.

If the heirs or beneficiaries are not able to agree on a fair market

value for the home, they can hire a licensed appraiser or probate referee to determine the fair market value. Families should be mindful that this is an added cost that can reduce the size of the inheritance available to heirs and beneficiaries, but it is often a necessary one. Additionally, questions about the distribution of the personal property within the home tend to have less-than-clear answers. An inventory

and appraisal can begin to provide necessary guidance on the distribution of personal property.

(3) Distributions.

Distribution could be by probate court decree, trust transfer deed, transfer on death deed or a Probate Code section 13051 proceeding - the Small Estate Proceeding. If the Probate Code's Small Estate Proceeding is used, then the issue of property tax reassessment is moot because of Proposition 19, discussed below.

(a) Partition. The failure to determine a value for the real property could result in one of the heirs or beneficiaries filing a partition action under California Probate Code sections 11950 to 11956, which authorizes filing the partition petition in the probate court and lists the requirements for the petition and hearing. The difficulty with partition actions is that the heirs and beneficiaries lose control over the appraisal and sale of the real property - they have to take what they get.

(b) Proposition 19. Proposition 19, or the Home Protection for Seniors, Severely Disabled, Families and Victims of Wildfire or Natural Disasters Act, is a Constitutional Amendment passed in 2020 that imposes limits on property tax benefits for inherited family property. In a Small Estate Proceeding, where the real property

at issue is valued at \$1,000,000 or less, property tax reassessment is not required. See LA County Assessor, “Proposition 19” available here (accessed April 18, 2025).

Investment property

Another typical distribution is the family that owns both a family residence and a small rental property as an investment. Assuming that both are valued at \$1,000,000 each, there are significant issues with the transfer of either property. The residence, if occupied by parents, can be transferred to a child without a reassessment under Proposition 19 if the child is going to live in the home. Under Proposition 19, there is currently no exclusion from reassessment for real property other than a personal residence. As a result, the child who inherits an equally valued investment property will face tax liability and reassessment burdens not shared by the child who receives the family home.

Unexpected distributions abatement

At times, a will or trust includes specific bequests that can not be

carried out because the assets have been depleted, often due to tax obligations taking priority. In these cases of abatement, heirs or beneficiaries are subject to the court’s order to fix the amount that each beneficiary must contribute for abatement, and the personal representative must reduce the shares accordingly.

Competing testamentary documents

A later-discovered will or trust amendment that upsets the expectations of any heirs or beneficiaries is fuel for family feuds. In the moments when we most want the decedent to be able to speak for themselves as to their intent, a family in dispute instead inherits competing documents leading to potential litigation as a result of unexpected (and unequal) devises and bequests.

Reminders for attorneys

1. Listen to your clients, but dig deeper. Grief and fairness are subjective, so it is imperative that you take the time to understand what lies beneath the emotions, identify your client’s ultimate goal, and counsel them appro-

priately. Disputes within families can bring unsavory facts to light, and it is in the client and their attorney’s best interest to bring them to the fore and strategize up front.

2. Show your clients their true hand.

If the dispute advances to litigation or alternative dispute resolution, make sure your client has a realistic understanding of emotional, reputational

and financial cost of litigation and all likely outcomes.

3. Remember who your client is.

No matter how well-meaning or capable your client’s spouse, children, or other close relatives may be, your professional responsibility to your client alone is paramount. Protect your client’s interests only and guard their privileges and confidences vigilantly.

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