

# Northern California Planned Giving Council 31<sup>st</sup> Annual Conference

## Your Donor Has Died and You're a Beneficiary: Now What?!

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# Today's Topics

- Post-mortem donor relations
  - Charities' rights and responsibilities
  - Understanding documents
  - Working with estate representatives
  - What to expect regarding distributions
  - Releases and waivers
  - When to call in an attorney
-

# Why is this important?

- This is the PG program's payoff!

BUT....

- Significant assets are often lost between date of death and closing of estate or trust.



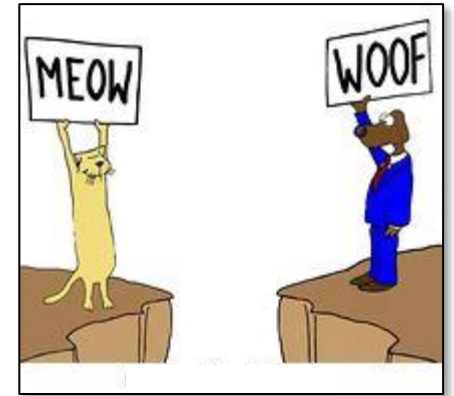
# Primary Causes of Estate Shrinkage

1. Not understanding the estate administration process.
2. Failing to pay attention.
3. Not following up.
4. Theft & incompetence.



# Prepare While the Donor is Alive

1. Get information about the estate plan/gift:
  - Make sure you understand donor's intent.
  - Review your gift acceptance policies.
  - Work out any potential problems.
  - Document the plan.
2. Pay attention to your donors.



# When You Learn of the Death

- Understand the donor's relationship with the organization and various individuals.
  - Notify colleagues.
    - Make sure the individual is removed from mailing lists.
  - Pull out your Post-Death Stewardship checklist.
-

# Post-Death Stewardship Checklist

## *As soon as you learn of the donor's death*

- Notify colleagues
  - See that a condolence note goes to the surviving spouse/family.
    - Depending on relationships this might be from:
      - You
      - Director of Development/Planned Giving
      - CEO – few situations when the CEO should not write a note!
    - Ghost-write if necessary
    - Find out with whom to communicate, if necessary
  - Find out about funeral/memorial
    - Consider attending or sending a representative
    - Consider sending flowers/food
      - Be sure to check on cultural customs!
  - Notify database manager to update mailing list
    - Beware – there may be multiple lists
    - Confirm how widow wants to be addressed
    - Reconfirm that databases have been changed
  - Place obituary in appropriate organizational publications
  - Review records for information about expectancies
    - If there is a bequest/trust – go to bequest checklist
    - If there is a life income gift – go to life income gift checklist
  - Check for outstanding pledges
    - Determine what to do about them and when
  - Identify the “donor’s representatives”
    - for estate matters
    - for personal contact
  - Designate an internal contact person for matters relating to the estate
-

- Write condolence note(s).



- Deal with your feelings.
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# Memorial Gifts

- The good
- The bad
- The awkward
  
- Stewardship of memorial fund donors



# Understanding Estate Administration: Wills vs. Living Trusts

A *will's primary purpose* is to transfer the decedent's property.

- Wills are effective only at death.
- Administered under court supervision.

A *trust's primary purpose* is to transfer property, but it can fulfill many other objectives.

- Court is not involved
  - Trusts can be operational during lifetime
  - Trusts are private
-

# Understanding Estate Administration: Bequests from Wills & Living Trusts

- Specific Amount
  - Specific Property
  - Residue or Percentage of Residue
    - Tend to be the largest gifts
    - Present most settlement issues
    - Every dollar spent during estate administration affects amount of charitable distribution
-

# Rights of Charitable Beneficiaries: Wills

California Probate Code governs all aspects of administration of wills and trusts.

- Beneficiaries' rights include:
    - Receipt of notice of a petition for probate.
    - Accounting of estate's activities – including payments made and monies collected.
    - May seek replacement of a personal representative.
    - May sue the personal representative for breach of fiduciary duties.
-

# Rights of Charitable Beneficiaries: Trusts

For irrevocable trusts:

California Probate Code sections 16060-16064

*“...upon reasonable request by a beneficiary, the trustee must provide the beneficiary with a report of the information relating to the assets, liabilities, receipts, and disbursements of the trust, the acts of the trustee, and the particular terms of the trust that are relevant to the beneficiary's interest.”*

- Beneficiaries have the right to enforce the terms of the trust and to hold the trustee accountable for any wrongful acts or omissions that affect that beneficiary's interests.
-

# Staff/Board Fiduciary Obligation to the Organization

- Understand the estate administration process.
  - Ask for documents.
  - Read and understand the documents.
  - Pay attention to the estate.
  - Evaluate carefully offers of reduced pay-out or settlement.
  - Understand what litigation entails.
-



Amtsgericht Stuttgart

## Eröffnungsniederschrift

aufgenommen am Dienstag, 13.11.2018 - Amtsgericht Stuttgart

### **Gegenwärtig:**

Bezirksnotar Gimbel

In dem Testamentsverfahren

**Johannes David Hatje, geboren am 19.06.1949, verstorben am 22.05.2018**  
- Erblasser -

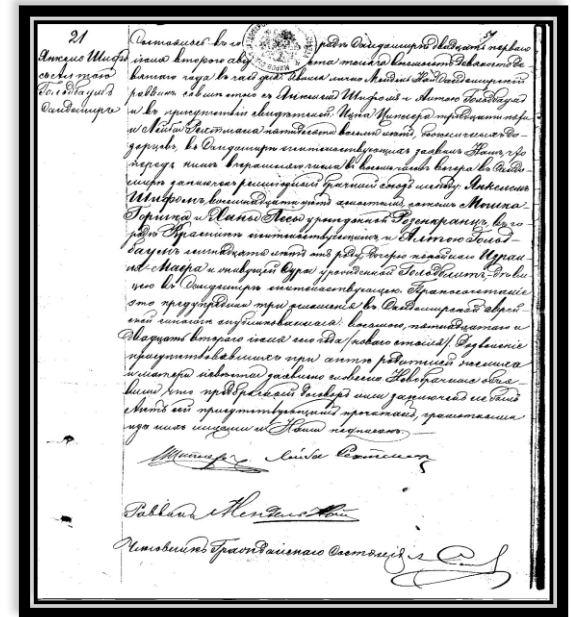
lagen dem Gericht zur Eröffnung vor:

1. Von Frau Caroline Hatje postalisch abgeliefertes eigenhändiges Testament vom 07.12.2017
2. Aus der amtlichen Verwahrung entnommener Verwahrungsschlag, dessen Verschluss unversehrt war und enthielt:  
Notarielles Testament vom 24.07.2015, beurkundet durch Notar Sorg in Stuttgart, URNr. UR.-Nr. 77/2015

Die Verfügungen von Todes wegen wurden eröffnet.  
Von dem Inhalt wurde Kenntnis genommen.

# Check the Documents

- Make sure you have all the amendments.
- Read the documents!
- Ask questions.
- Insist on copy of inventory.





# What to Look for in the Documents

- What are you getting?
  - Is there a specific purpose?
    - Is the bequest an endowment?
  - Can you accept the gift?
    - Will the charity incur expenses?
  - Who is the trustee/executor?
  - Who are the other beneficiaries?
-

# Communicating With the Estate

- Tell the representative what you need
- Ask:
  - What do they need?
  - What is the time frame for administration?
  - What is the estimated value?
  - Do they anticipate any issues?
  - Who should you thank/communicate with from the family?



To the beneficiaries of the [REDACTED] Trust:

Re: [REDACTED] and  
The [REDACTED] Trust dated July 18, 2008

I am writing to advise you that [REDACTED], more commonly known as [REDACTED], died on June 25<sup>th</sup>.

Sometime prior to his death, Mr. [REDACTED] established a living trust, which disposes of his assets. That trust, which he entitled The [REDACTED] Trust, was established by [REDACTED] on July 18, 2008. Later that same day, Mr. [REDACTED] exercised a power of appointment he had retained and named the Rainforest Action Network as one of the beneficiaries of his trust, leaving it the sum of One Hundred Thousand Dollars (\$100,000.00).

This gift is contingent upon the entity being qualified as a charitable organization at the time of distribution. Accordingly, I would appreciate it if you would provide the trust's attorney (whose name and address are provided hereinafter) with proof that the entity is such a charitable organization.

While he was initially the sole trustee thereof, on May 9, 2012 [REDACTED] and I assumed our roles as the Successor Co-Trustees thereof.

Now that Mr. [REDACTED] is dead, that trust is now irrevocable and may not be amended in any particular.

There is a legal requirement that the trustees notify the beneficiaries when a revocable trust becomes irrevocable because of the death of a settlor. This letter serves as that notice.

Specifically, the law requires that we notify you of the following:

**From:** [REDACTED]  
**Sent:** Wednesday, October 12, 2011 4:47 PM  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** [REDACTED]

Dear Ms. [REDACTED]

I am writing to follow up on a letter to you from [REDACTED] dated August 24, 2011. I spoke with Anne at your office and she suggested that I contact you by email.

As requested in the letter, we would like to receive a copy of the most recent trust accounting, as specified in the trust document Point 8. Also, we would like to clarify the status of the trust. As you know, the trust document specifies that the trust would terminate upon the death of the trustor, [REDACTED].

As a public charity, the [REDACTED] has a fiduciary responsibility to our donors and our mission and it is with this in mind that we request the information as specified in the trust document. We would appreciate receiving this information as soon as possible.

Thank you very much.

[REDACTED] on

Major Gifts Officer

[REDACTED] 4

**From:** [REDACTED]

**Sent:** Thursday, October 13, 2011 9:07 AM

**To:** [REDACTED]

**Cc:** [REDACTED]

**Subject:** [REDACTED]

Dear Ms. [REDACTED],

My office has already provided you with documentation that the gift to [REDACTED] has been fully satisfied. I don't understand why you persist in asking. My client made a very generous gift to your organization and he finds these continual inquiries to be quite annoying.

[REDACTED]

# Staff/Board Fiduciary Obligation to the Donor

- To see that the donor's gift is completed.
- To make sure the gift is used properly.



# Collecting the Money from Wills and Living Trusts

- Checklists, checklists, checklists.
  - Create a good relationship with estate representatives.
    - Offer the documents they will need.
  - Request copies of documents.
    - Specific bequest.
    - Residual or percentage bequest.
  - Ask about timing.
-

**NEW BEQUEST FILE CHECKLIST**

Name \_\_\_\_\_ Internal ID# \_\_\_\_\_ DOD \_\_\_\_\_

Create new file or update expectancy file  
Y  N  Complete

Add info on Trustee/Executor  
to database Y  N  Complete

Add Attorney/Law firm info  
to database Y  N  Complete

Request will/trust Y  N  Complete

Scan will/trust Y  N  Complete

Create & print summary of donor info, estate info and details of gift  
Y  N  Complete

Obtain contact info for (Atty/Family/Friends)  
Y  N  Complete

Add to Excel spreadsheets Y  N  Complete

Notify internal beneficiary, e.g., benefitting department  
Y  N  Complete

Condolence letter Y  N  Complete

From: \_\_\_\_\_ Date sent: \_\_\_\_\_

From: \_\_\_\_\_ Date sent: \_\_\_\_\_

Referred to Counsel Y  N  Complete

Name: \_\_\_\_\_ Phone: \_\_\_\_\_

Firm: \_\_\_\_\_ Email: \_\_\_\_\_

Additional Notes: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_



**ESTATE ADMINISTRATION FORM & CHECKLIST**

Donor: Name: \_\_\_\_\_

Last address: \_\_\_\_\_

Date of Death: \_\_\_\_\_ Date of Will/Trust: \_\_\_\_\_

Name of surviving Spouse/Partner: \_\_\_\_\_

Personal Representative or Trustee:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_ Email: \_\_\_\_\_

Attorney: Name: \_\_\_\_\_

Firm: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_ Email: \_\_\_\_\_

Charitable bequest (amount, percentage): \_\_\_\_\_

Restrictions (if any): \_\_\_\_\_

Paragraph of Will/Trust providing for gift: \_\_\_\_\_ *(Attach a copy of relevant text)*

Testator/Settlor's relationship to Charity: \_\_\_\_\_

Other Estate/Trust information: \_\_\_\_\_

Other Charitable Beneficiaries: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Distributions Received:

Date: \_\_\_\_\_ Amount: \_\_\_\_\_ Final: Y  N

Date: \_\_\_\_\_ Amount: \_\_\_\_\_ Final: Y  N

Date: \_\_\_\_\_ Amount: \_\_\_\_\_ Final: Y  N

**Documentation Received:**

- Notice of Estate Administration
- Copy of Will/Trust
- Death Certificate
- Inventory
- Federal Estate Tax Return
- Notice of Audit
- Receipt & Release
- Final Distribution

**Documentation Sent:**

- 501(c) (3) letter
- Form W-9

**Correspondence Sent:**

- Condolence Letter(s) (*immediate*)
- Attorney Letter(*immediate*)
- Follow-up Letter to Attorney  
(*3 months*)
- Inventory Follow-up Letter  
(*10 months*)
- Request for Tax Return  
(*10 – 15 months*)
- Advance Distribution Inquiry
  - *for specific bequests (9 months)*
  - *for remainder or % (15 months)*
- Request for Accounting
  - *for remainder / percentage gifts*
- Distribution Thank You Letter
  - *to family*
  - *to attorney*
  - *to trustee/personal representative*

**Internal Procedures:**

- Database updated
- Report to Finance Office

# Administrative Resources

- TrueBQuest
    - [www.Truebquest.com](http://www.Truebquest.com)
  - Bequest Manager
    - [www.pgcalc.com/gift-admin/bequest-manager](http://www.pgcalc.com/gift-admin/bequest-manager)
-

# Understanding the Trustee/Executor's Job

- Finding assets,
  - Securing and sorting possessions
  - Getting appraisals
  - Paying bills and debts
  - Terminating utilities and subscriptions
  - Paying funeral expenses
  - Arranging income to surviving partner or family
  - Finding an attorney and accountant
  - Making claims for life insurance, annuities, pension plans when estate is beneficiary
  - Maybe finding out who is the beneficiary
  - Maybe mediating between heirs
  - Making distributions to heirs including transferring ownership of accounts & real estate
  - Filing final income tax return, estate tax return and intervening tax returns for the estate itself, .....
-

# Distributions - Fees

- **Wills:** California has statutory fees for executor and attorney are based on size of estate.
    - Attorney and extraordinary fees can be much more.
  - **Trusts:** What does the trust say?
    - Trustee fees generally do not exceed 1% of the trust value.
  - **Remember:** *If your charity is a residuary beneficiary, every dollar spent during the estate administration affects the amount of your charitable distribution.*
-

# Taxes

## Estate income tax

- Income distributed to beneficiaries is not taxed to the estate.
- **Income distributed to charity is tax free.**
  - Suggest executor distribute income in the year the estate earns it.

## Allocation of estate taxes

- Rarely a factor under current tax law.
  - **Watch for “equal distributions” or division of assets after payment of taxes.**
-

# Distributions - Check the Numbers!

Compare inventory values with final accounting.

- Accounting is essential for residuary beneficiaries.
  - Is it the amount you expected?
  - Review expenses.
  - Pay attention to fees, expenses and tax calculations.
  - Should you take an asset or have the estate liquidate everything?
  - Re-review before depositing the final check.
    - Is it the amount you expected?
-

# Real Estate

- Watch for sale price compared to inventory value.
  - Should you accept real estate?
    - Make an informed and conscious decision.
      - Beware of Dog Properties
      - Timeshares
    - Get environmental assessment prior to accepting.
    - 6-12 months from date of death to disclaim.
    - Who will manage it?
  - Check expenses.
-



# Distributions

If no distributions when expected:

- Contact the executor
    - Ask them to consider early, partial distributions.
    - A “refunding agreement” for early distribution is reasonable.
  - Distributions must be made within a “reasonable” time.
  - Check accounting PRIOR to cashing final checks.
-

# Waivers and Agreements

- Reasonable to indemnify executor if unexpected audit results, etc.
  - Overly broad waivers.
  - Distribution may not be contingent on agreement to indemnify.
  - Beware of signing special agreements.
-

8. Indemnification. The Beneficiaries shall jointly and severally indemnify and defend the Trustee and the Trustee's heirs or assigns against any and all liability, including, but not limited to, assessments of tax and any penalties and interest thereon, losses, costs, damages, attorneys' fees, costs associated with tax audits, and all other expenses which the Trustee may sustain or incur in connection with any audits, claims, suits or judgments by reason of, or in consequence of, the final distribution of the residue of the trust estate of the Trust or the performance of this Agreement.

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# Collecting the Money from Retained Life Estates in Real Property

- Secure the property
    - Insurance
    - Maintenance and management arrangements
  - Other residents
  - Documents
    - Death certificate
    - Deeds
  - Arrange for disposition
-

# Collecting the Money from Life Income Gifts

Notify Trust Administrator & business office

- If organization is not the trustee: request documents
  - Check document provisions
    - Additional income beneficiary?
    - Final payment date?
    - If successor beneficiary – right to revoke?
  - Obtain death certificate
  - Trust Administrator prepares final tax documents
    - CGAs may yield additional deduction if donor did not live to life expectancy
-

# Sticky Issues

When no notices are forthcoming

- If you have reason to believe the donor planned a gift/larger gift
    - Ask the administrator
    - Contact a spouse/relative
    - “Investigate”
-

# Collecting the Money from Retirement Plans & Insurance Products

## What you'll need

- Death certificate (often a challenge to obtain)
  - Each company has its own forms
  - Helpful to have a copy of the designation of beneficiary form
  - Calendar for follow-up
    - Distribution should not take a long time ,, BUT delays are not unusual (especially IRAs)
  - Check calculations when proceeds come in (often hard to do with IRAs)
  - Retirement policies are generally more difficult to collect than insurance benefits because of ERISA regulations,
-

# Distributions from Retirement Plans and Insurance Policies

No requirement that plan administrators or insurance companies notify beneficiaries of the account

- *Beneficiary must know where the account or policy is located* and must prove that it is entitled to receive the distribution
- **Essential** to ask donors for information about the gift
  - *Informing the charity may be the only way to assure fulfillment of donor's intentions*

*Even with knowledge of the account, collecting retirement assets is still a challenge*

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# Collecting Retirement Plan Assets

When the charity does know about and have the IRA information:

- Custodians often claim the charity is a “new customer” and require it to set up a new account (called an Inherited IRA, Stretch IRA or Beneficiary IRA).
  - The custodian then transfers the money or stocks/bonds from the original IRA into the new account.
  - The owner of the new IRA account (the charity) must ask to liquidate the second account.
  - No consistency in custodians’ internal policies and procedures or what forms are necessary to set up the Inherited IRA.
-

# Collecting Retirement Plan Assets

An increasing number of custodians ignore or do not understand that *the charity* is the IRA beneficiary

- They require the charity's officers, staff or board members to provide
    - Name, home address and phone number
    - Social Security Number
    - Driver's license information
    - Statement of net worth
-

# Collecting Retirement Plan Assets

This is not supported by law because only individuals can open an Inherited IRA.

- *IRC Section 408(d)(3)(C)(ii)*

**(ii) Inherited individual retirement account or annuity**

An individual retirement account or individual retirement annuity shall be treated as inherited if—


- (I) the individual for whose benefit the account or annuity is maintained acquired such account by reason of the death of another individual, and
- (II) such individual was not the surviving spouse of such other individual.

- “Individual” is defined in the Code as a human.
  - Since as charity is not a human, how can a charity establish an Inherited IRA?
-

# Collecting Retirement Plan Assets

## What to do:

**Push back** on requests to open an Inherited IRA.

- Write to the IRA custodian's General Counsel.
  - Request an exception to their rule against payment of a lump sum.
  - <https://charitablegiftplanners.org/ira-distribution-resource-center>
  - As a result of work by the  NATIONAL ASSOCIATION of Charitable Gift Planners and its members some custodians have changed their policies.
  - For those IRA custodians that do require an Inherited IRA Account, a recent FINCEN pronouncement confirmed that the personal information of individuals associated with the charity is required. The National Association of Charitable Gift Planners has a task force which is continuing to work on these issues.
-

# Factors Affecting Distributions

- Erosion of estate value due to donor needs
    - Longer life spans
    - Low interest rates mean donors may be using more principal
  - Family members in need of funds may be more prone to fight
  - “Something’s wrong”
-

# Sticky Issues

- Outstanding pledges
  - ✓ File a claim against the estate



# Sticky Issues

- Problematic restrictions
  - Competency issues
    - Issue can be raised by family or others.
    - Drafting attorney may be helpful.
    - Pay attention to what goes in your file!
  - Deferred gift after death of surviving spouse
    - Often do not receive notice until second death
    - If charitable remainder beneficiaries could not be changed after first death, was trust administered properly during period between first and second death.
-

# Sticky Issues

- Unhappy/hostile heirs



## Fight over Kinkade's will gets nasty

By Julia Prodis Sulek  
Bay Area News Group

The battle over world-famous artist Thomas Kinkadee's estate is getting nastier.

His girlfriend has produced barely legible, handwritten notes she claims Kinkadee wrote, giving her the keys to his Monte Sereno mansion and \$10 million to establish a museum of his original paintings there.

In documents obtained Monday by this newspaper, Amy Pinto-

Walsh — who began dating Kinkadee six months after he separated from his wife, Nanette — also seeks to administer \$66.3 million from Kinkadee's estate. That figure appears to include tens of millions of dollars worth of Kinkadee's original artwork as well as other notable paintings he collected and hung in his home.

Nanette Kinkadee, who was married to the artist for 30 years and has four daughters, has been

fighting Pinto-Walsh every step of the way, claiming in court documents that she was a gold-digger intent on fleecing the estate.

Pinto-Walsh, however, said in a court filing obtained Monday that although she and Kinkadee had their troubles, they were in love and planned to wed in Fiji as soon as Kinkadee's separation and ultimate divorce were finalized. They had even shopped for an engagement ring, she said.



# When to Hire an Attorney

- Charity is identified incorrectly in documents.
  - You cannot understand or reconcile documents and cannot get internal help.
    - Residual or percentage bequests.
  - No response from estate representative or attorney.
  - Notification of legal challenge.
  - If a dispute arises.
  - Consider joining with other charities.
-

# Post-Post-Mortem Stewardship

- Family
    - Long-term contact
      - How the gift is used
      - Changing needs & circumstances
  - Advisors
-

# Primary Take-Aways

- Collecting the money is what you're working towards from the beginning!
- Be conscious of your responsibilities to your organization.
- Pay attention and ask questions.
- Manage relationships with family and advisors.



# QUESTIONS?

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