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**Collecting Estate Gifts:
Getting All That You Are Due**

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BEQUEST DONORS

- Want To Make A Difference
 - Want To Leave A Legacy
 - Want Their Wishes Followed
- Responsibility To Honor Their Wishes
- Bequest Donors Live Longer
 - Women Currently Living Longer
 - Men Will Soon Live As Long As Women

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ESTATE ADMINISTRATION

- Development Staff Focus:
 - Acquisition, Upgrading & Maximizing Gifts
 - Stewarding Relationship
 - Non-Adversarial
- "Estate Collection" Is Unusual Focus
 - Not Always Natural, Comfortable
 - Trust, But Verify

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ESTATE ADMINISTRATION

- Often Treated as Bureaucratic Exercise
 - Paper Processing Vs. Collection
- Assumes Everyone Will Do “Right” Thing
- Responsibilities at Charity Often Unclear
 - Should Be a Team Effort With a Point Person
 - Everything Through the Point Person
- Focus Usually Collecting a Check
 - Frequently, Any Check

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WHY BE CONCERNED?

- Estate Collection NOT “Paper Shuffling”
- Not Paying Attention Invites Abuse
- Rules Often Honored In The Breach
- Need to Speed Up Receipt of \$\$
- Problems With Distant Family Members
- 10-15% of \$\$ For Particular Charity Lost Between Death & Closing?

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TYPES OF BEQUESTS

- Specific Amount
 - \$11-\$12K Range Typical, 40-50% Of Gifts
 - Few Problems, Should Not Be Major Focus
- Specific Property
 - Unusual, Rare: Small % of Estates
- % of Total Estate
 - Not Common, Except When All to Charity

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RESIDUARY GIFTS

- Tend to Be Largest Estates
 - Often 50%+ Of **Number** Of Estate Gifts
- Huge Percentage of Bequest Revenue
- Presents Most Settlement Issues
- Be Proactive, Pay Closer Attention
 - Every \$1 Spent Coming From Your Pocket

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WHAT IS PROBATE?

- Process of Proving Ownership
- Transferring Assets in Orderly Way
- Often Requires Discretionary Decisions
- Information Public
- Paper Intensive
- Follows State & Local Rules

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PROBATE

- A Legal Process
 - Rules Often Ignored, If No One Speaks Up
- Local “Custom” vs Formal Rules
 - Often Significant Executor Discretion
 - Potential For Error, Abuse
 - Fee Issues

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WHEN THE DONOR PASSES AWAY

- Probate Process Initiated
- Parties Notified
- Executor Appointed by Judge
- Judge Oversees Process
 - Usually Quite Passive
- Small Estates: No Judge Involved
 - Handled Informally by Paper Filings Only

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PROBATE PROCESS

- Bureaucratic
 - Often Very Informal in Decision Making
- Nearly Anything Proposed Gets Approved
 - In Most States
 - **Unless** Someone Objects
- Great Practical Power to Executor

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FOLLOWING THE RULES OF PROBATE

- Executor May Not Know Rules
 - May Not Bother To Follow Rules
 - One-Sided vs. Equal Pressure?
- Ever Get a Bequest Check With First Contact From Estate?
 - Is Executor Following Legal Requirements?

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PROBATE PLAYERS

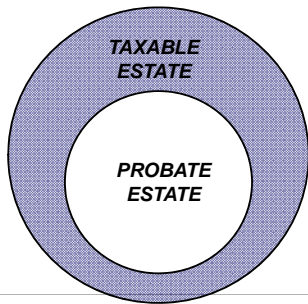
- Court
- Executor/Personal Representative
- Estate Attorney
- Charities
- Other Heirs
- Attorney General's Office

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PROBATE VS. NON-PROBATE ESTATE



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NON-PROBATE ASSETS

- Joint Ownership w Right of Survivorship
- Retirement Plans
- Life Insurance
- Payable on Death Accounts
- Transfer on Death Accounts
- Contractual Asset Agreements
- Most Assets Held in Trust

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PROBATE ASSETS

- Only Assets That Pass By Will
- Often Small Fraction Of Total or Taxable Estate
- Trusts Increasingly Common In Charitable Estates

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TRUST GIFTS

- Require More Careful Handling
- Information Not Public
 - Trustee May Resist Giving Information
- No Judge Involved
 - Unless Filing Potentially Costly Court Action
 - Persuasion Often More Important
- Same Issues As Will, But More So
 - Secrecy = More Potential for Abuse

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TRUST GIFTS

- Often More Complex Than Wills
- Communication Vital
- Tactics Vary
- More Dependent on Nature of Trust
- Read Trust Document Carefully
 - Trusts w/ Same Name Often Very Different

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HOW TO GET INFORMATION

- Ask Early By Phone
 - With Follow Up Letter
- Start With Friendly Approach
- If Continued Resistance:
 - Talk About Demanding CEO, CFO
 - “Crazy” Board Member
- Can Also Decline To Sign Off At End

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WATCH FOR POTENTIAL PROBLEMS

- Pay Special Attention to Residuary Gifts
 - Don't Spend Much Time on Specific Gifts
- Get FULL Copy of Will
 - Partial Copy Not Good Enough
 - Excellent Source Of Information
 - Copies Available at Local Probate Registry

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STAY IN TOUCH WITH EXECUTOR

- Create Expectations Early On
 - Call & Ask Questions From the Start
- Big Red Flag:
 - Executor Doesn't Share Info or Return Calls
- Talk With Executor Regularly
 - Some Evenhanded, Some Adversarial

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CRITICAL INFORMATION

- Send Proof of Tax Status, Letter at Start
- Request Inventory, Accounting If Residuary
- Ask About Family Members to Thank
 - Best Done by Phone
 - Letters Tend Not To Work Well

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INVENTORY & ACCOUNTING

- Quality Varies Widely
- Review Inventory & Accounting
- Ask About Any Real Property
 - Compare Inventory Value With Sale Price
 - If Values Don't Seem Right, Ask Questions

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REAL ESTATE

- Watch for Fire Sale Pricing, Valuation
- Selling Property in a Slow Market
 - May Need to Prod Executor to Sell
- Trying to Force Property On Charities
 - Resist Unless You Want It
 - May Try to Dump "Bad" Asset on Charity

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REAL ESTATE

- Toxic Waste/Superfund Issues
 - Only If Real Estate Being Distributed Directly
 - Get Phase I Environmental Assessment Prior to Taking Ownership
 - Inquire About Property Early On
- Examine Creative Sale Options
 - Taking Back Paper, etc.

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PROPERTY PRIOR TO SALE

- Attorney Handling Estate
 - Cleans Up the House
 - Bills \$200/hour?
- Ask About Expenses if Things Don't Look Right

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Difficult, Problematic Assets

- Only Of Concern If Being Distributed In-kind
- 6-12 Months From Death to Disclaim
 - Timeshare in Death Valley...
 - Squirrels

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TAX APPORTIONMENT

- Who Should Pay Estate Taxes?
 - Gift to Heirs Causing Tax to Occur?
 - Or Charity That Provides 100% Deduction?
- If Will Silent, Taxable Heirs Should Pay
 - Charities Should Not Pay for Heirs
- Executors Can “Overlook” This
 - Few Charities Ever Ask or Understand
 - Family Local, Charity Far Away

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INCOME TAX ON ESTATES

- Income Earned by Estate Taxed
 - At Trust & Estate Tax Rate In Year Earned
 - Minus Estate Expenses For That Year
- Income Paid Out Not Taxed to Estate
 - No Tax If Paid Out to Charity In Same Year
 - If Significant, Encourage Executor to Pay Out Estate Income In Year Received

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COMPARING DOCUMENTS

- Compare What Will, Accounting Says
 - With What Was Received
- Ask Questions
 - Not Important if a Specific Amount, Asset
- Always Review Before Depositing Final Check

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EXCESSIVE FEES

- Request Charity to Sign Off On Fees
 - “Avoid Having to Go to Court & Delays”
- Fees May Be Higher Than Law Allows
- Is Fee Reasonable?
 - 3-5% for Ordinary Estate
 - Varies by Locality, Size & Situation
- Extra Fees for Difficult Estate OK?

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NEGLIGENCE, DELAY

- Negligence
 - Executors, Attorneys
 - May Be Retired, May Not Understand Role
 - May Not View as Priority
- Intentional Delay
 - Opportunity for More Fees?
 - May Have Mishandled Estate
 - May Have Caused Asset Loss, Decline

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THEFT, EMBEZZLEMENT, ETC.

- It Does Happen
- Lack of Communication, Information First Sign
- Executor May Have Own Problems
- May Assume No One Paying Attention
- No One At Courthouse Watching

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DISTRIBUTION TIMING

- Pay Attention to Timing
- Establish Expectations Early On
- Request Estimate of Timing
 - Raise Questions if Schedule Not Followed
- Press for Early, Partial Distributions
- Executor: Great Discretion With Timing

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REFUNDING AGREEMENTS

- Agreement to Refund All, Part of \$\$ Without Delay or Court Order
 - Actual Refunds: 1 in 5,000 Estates
- Unexpected Expenses Can Arise
- Who Is Liable if \$\$\$ Given Out Prematurely?
- What Happens if You Don't Sign?

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RECEIPT & RELEASE AGREEMENTS

- Charities Asked to Sign Agreements
 - "To Speed Up Distributions & Avoid Having to Go to Court for Approval"
- Charity Doesn't Need to Sign to Get \$\$
 - Executor Must Ultimately Send Charity \$\$
 - Some Cover Theft, Negligence, Etc.
- May Not Wish to Sign Such Agreements
- Prepare Own Agreement, Sign & Return

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COMPETENCY QUESTIONS

- Issue Can Be Raised by Family, Others
 - Often Simply an Effort to Get More \$\$\$
- Drafting Attorney Can Often Address
- Significant Cause of Litigation, Threats
- Pay Attention to What Goes in File
 - “Totally Drunk At 2 pm When I Arrived” Vs.
 - “Best to See Her in the Morning When She Has The Most Energy”

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HOW TO FORCE ISSUES, ACTION

- Be Persistent, But Be Nice First
- Blame the Auditors—As Last Resort
- Call Attorney General's Office
 - Protector of Charities & Charitable Trusts
 - Very Broad Authority
 - Court WILL Pay Attention When AG Involved
 - Go Jointly With Other Charities
 - Know Exactly What You Want

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MANAGEMENT OF LITIGATION

- Must Have Local Counsel
- Probate Courts: Run By Good Old Boys?
 - Rarely Smart to Use Pro-Bono Counsel
- Consider Contingency
 - If No Budget Available or Cost Too High
- Take Legal Costs Directly Out Of Ultimate Settlement
 - Never Shows Up in Your Budget

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MANAGEMENT OF LITIGATION

- Estate Attorney Does NOT Represent You
 - Even if Not Adversarial
- Share Costs With Other Charities
- Make Sure It Is Clear Who Can Settle
 - Get OK Within Realistic Settlement Range
 - Identify 1 Person Who Can Make Agreement
 - Most Disputes Will Settle Financially

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MAJOR CAUSE OF ESTATE SHRINKAGE

- Failure to Follow Up
 - Regular & Timely Monitoring, Follow-Up Critical
 - Especially With Residuary Gifts
- Patience Is Important
 - Reasonable Delays Happen

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CONCLUSION

- Talk With Executors
- All Estates Are Not "Equal"
 - Time Must Be Budgeted
 - Exert Effort Where Most Return
- Specific Amount Gifts Less Important
- Watch Residuary Estates Closely
- Pay Attention

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Conclusion

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