

The DAILY PLAN-ITTM

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Ruling from the Grave

I just read a recent Wall Street Journal article titled, "[Trying to Control Your Heir's Behavior from the Grave Often Backfires.](#)" If you can't open the link, email me and I'll send you the PDF of the article.

It was a short read, but it raised a number of issues for me. Here are of my thoughts:

Powder keg of emotions

I think the article misses a major point.

Most of the time, what looks like "ruling from the grave" is actually protecting from the grave. If it took your clients a lifetime to build their wealth, it doesn't matter if it is modest or immense. It is their wealth. They want to naturally pass those assets to the most important relationships in their lives.

Usually, the issues that look like "ruling from the grave" are typically a reflection of family values that the deceased wants reinforced or protected. The most classic are remarriage protections for the surviving spouse.

For your clients' children, the classic protections are divorce protection and credit protection. Usually these are not controlling but are designed to protect from bad things happening to good people.

Clients who are grandparents can further their "value" statements when they leave college money and graduate school money to grandchildren. In essence, they're putting the money where their values are.

Strategies to consider

First, I would never recommend any of these types of issues to be addressed in a Last Will and Testament. I believe they need to be addressed through either a Revocable Trust or an Irrevocable Trust. The reasons for this are obvious, and this article is too brief to go through one by one.

Second, choosing the right trustees is critical. Your clients must learn to trust their trustees and give them broad discretion to do the appropriate thing for their beneficiaries. A well-chosen trustee or trustees can head off a lot of problems by using their discretion in determining that which is in the "best interest" of the beneficiaries.

Third, your clients should use trust protectors as an additional backup. A trust protector can remove a poorly behaving trustee if the trustee is not doing their job. Plus, it keeps the possibility of a fight out of the court system.

Fourth, your clients should look for ways of avoiding fights. Mediation as a precondition to any form of litigation can reduce a lot of conflicts and misunderstandings.

Finally, remember that it is the trust maker's money! It is their assets that they created. It is absolutely their choice as to what should happen to it. No one is entitled to be a beneficiary.

Sometimes beneficiaries don't understand that, they throw a fit, and they say it's "unfair" that the trust maker's values don't align with theirs - therefore they should get the chance to rewrite the testamentary intent of the trust maker.

Fortunately, that is not how the law currently works. It's your clients' stuff and they get to say when, how and to whom their stuff goes.

Control and protection

Sometimes control and protection appear to be both sides of the same coin. Protection looks like control and control looks like protection. It all depends on your point of view. If you are wrestling with a client that is struggling with these issues, please give us a call so we can help.

I hope you found this article useful, and if you have a question, please don't hesitate to call our office.

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