

Document-Mill Attorneys No Deadlines

One of the worst probate cases I litigated many years ago centered around the following sloppy provision in a trust: "distribute my assets as soon as possible." The primary asset was Mom's home. The dictator trustee administering Mom's trust interpreted the phrase "as soon as possible" to mean at least four years after Mom's death. The dictator would have delayed even longer than four years if we had not taken over the case three years after Mom's death and persuaded a court to order his removal and appoint a professional fiduciary.

Fast forward. Things have not changed. A client met with us just yesterday to ensure that no surprises would disrupt her plans.

In reading the client's trust, I came across the following provision: "prior to dividing the trust assets into separate shares, my trustee shall sell in a commercially reasonable manner all real property owned by the trust, and the net sale proceeds shall be included in the assets which are allocated to the separate shares."

Like the sloppy provision in that case many years ago, this sloppy provision also had no deadline. There was no deadline imposed on the trustee as to when the properties must be sold. A dictator trustee could take years to sell the properties, supplying a host of excuses: the market is bad, or it would be wiser to rent the properties, or yada yada, blah, blah.

This provision is sloppy not only because it fails to give deadlines. The provision is sloppy because it does not define what to do if the market is in fact down; it does not address the possibility of renting the properties under various circumstances (again, for example, if the market is down); it does not address whether the properties should be sold as is, or whether the properties should be fixed up and to what extent. And exactly what does the fancy phrase "commercially reasonable" mean? Instead, this provision is just sloppy, minimal legaleze meant to impress a gullible client. The provision is another typical mistake by a document-mill estate planning attorney. This attorney was not thinking at all about the host of surprises that could blow this provision apart, create unnecessary conflicts, and put everyone into litigation.

Be wise. That means cautiously interviewing document-mill attorneys referred to you in pre-paid legal plans. It means being careful about retaining a network attorney advertised on radio by internet will and trust companies. Be wise. Retain an attorney who is carefully paranoid and obsessive about every conceivable surprise that could disrupt your planning.

Craig E. Hughes