Planning to Prevent a Challenge to an Estate Plan

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There are several ways in which a disgruntled beneficiary or disinherited heir can challenge a last will and testament or a trust, including (1) lack of testamentary capacity, (2) undue influence, (3) failure to follow testamentary formalities, (4) ambiguities in the documents, or (5) a claim that the will or trust in question was revoked. A successful challenge can result in a court setting aside the will or trust and causing a decedent's property to pass in accordance with an earlier will or trust, or, if none, to the decedent's heirs at law under the statute of descent and distribution.

Clients who fear or anticipate a challenge to their estate plan sometimes ask if there is anything that they can do to prevent such a challenge. Although there is no "magic bullet" to absolutely prevent such a challenge, the following steps can be taken during the planning process to reduce the possibility of a challenge to an estate plan.

Put an estate plan together early and review the plan often. Successful challenges of estate plans often involve clients who executed their estate plans in later years and with diminished mental capacity. These challenges are typically brought under the claim that either the client did not understand what he or she was doing when signing the estate planning documents or that the client was susceptible to pressure from third parties to draft the estate plan in a manner that did not accurately represent the client's intentions. Establishing a plan at a time when there is no doubt regarding a client's mental capacity and reviewing the plan regularly with an estate planning attorney is a powerful way to demonstrate to heirs that a client is in control of his or her estate plan.

Execute a plan with an experienced estate planning attorney. An experienced estate planning attorney will provide several benefits that should help prevent a challenge to an estate plan. First, an experienced attorney has an in-depth understanding of the law and can draft the estate planning documents in a manner to avoid drafting ambiguities that can result in a challenge. Second, experienced estate planning attorneys understand the execution requirements for various estate planning documents and, by overseeing the execution of such documents, a client can be certain that testamentary formalities are followed. Third, experienced estate planning attorneys are more likely to be able to identify when a client lacks the mental capacity to execute estate planning documents or if the client is the subject of undue influence. Asking the right questions and properly documenting the process can result in valuable evidence to defend against a challenge to an estate plan based on lack of capacity or undue influence. The attorney could also serve as a witness in any such judicial proceeding.

Share the plan with family and explain your decisions. Sharing an estate plan with heirs can have multiple benefits. One potential benefit is that it will inform them of the client's intentions ahead of time so that there will be no surprises after the client's death. Another potential benefit is that by hearing directly from the client what his or her intentions are and the reasoning behind them, heirs will be less likely to challenge an estate plan at death under a lack of testamentary capacity or undue influence argument since they are hearing those intentions directly from the client.

Add a "no contest" clause to a will or trust. A typical "no contest" clause provides that any beneficiary who challenges the decedent's will or trust would forfeit anything that he or she would have otherwise received under such will or trust and his or her share would pass as though he or she, and potentially his or her issue, predeceased the decedent. Although "no contest" clauses cannot absolutely prevent a challenge to a will or trust, the goal behind them is to persuade the potential contestant not to bring such a challenge for fear of losing out on any inheritance that he or she would have received under the existing will or trust. Of course, if a person does not stand to lose anything (e.g., because he or she is not a named beneficiary), a "no contest" clause would not be effective as to such person. Many states, including Ohio, presently recognize "no contest" clauses for wills and trusts.

If you are concerned about the possibility that a disgruntled beneficiary or disinherited heir may challenge your estate plan after you are gone, it is best to address the issue while you are alive. Contact your Vorys attorney to discuss steps that can be taken during the planning process to reduce the possibility of a challenge to your estate plan.