Wright, Constable & Skeen, LLP
Attorneys At Law

5 Tips to Avoid Estate Litigation
Presented by: Diane S. Kotkin, Esq.
Zoom Webinar
June 24, 2021 @ 10AM EST

I'm in the Estates and Trusts area. I've been practicing for over 20 years, mostly in the trusts and estates field. I had originally started in the family law field but gravitated towards estates and trusts.

And so I've seen a lot over the past, 20 plus years, and I thought that this would be a great time to discuss estate litigation it's becoming one of the largest growing area of law, unfortunately. So what I'll do is I'll go through my top five. And then if anyone has any questions we'll take questions at the end. And we'll go from there.

So I think I'll just kind of dive right into it.

So one of the things is when a client comes to see me, obviously no one has the thought that "Oh, you know there's going to be litigation when I die." Some people do. But you never think that your children are going to fight, or heirs are going to argue over what you thought was crystal clear on your wishes.

So one of the things, it's an obvious one, but the first point I make, is to say, create an estate plan.

Have a will put it in writing, have a trust if that's the vehicle you'd like to use.

If you don't put something in writing, everything is just hearsay. I turn around and I say, I have three kids, but if I turn around to my daughter and I say, I want you to have my break front. But I don't put it in writing? It's not going to hold any weight, and if my other two kids want to break front as well we're going to create conflict.

So one of the questions I get is, well, I'm married. I don't need a will, because everything's going to go to my spouse.

My favorite.

If someone passes away without a will that state that you live in, so I'm going to take Maryland, has what they call intestate law.

So state law is going to decide how your assets are distributed.

And so if you die intestate, then in Maryland, it says that if you have adult children, and you're married, your spouse splits the assets with your children, which I'm sure was not really the intent, I would presume, I mean it's a good assumption, but why you know, I would want my husband to receive my assets when I pass away. My kids can have it after my husband passes but it doesn't work that way when Maryland law has to dictate what happens. So your adult children will get 50% you and your surviving spouse gets 50%. There's some elections there that you can make but it's, in essence, that's what happens.

You know it can be an unpleasant surprise. It also does create litigation.

If you don't have a will, and the assets don't go where you thought they would go, and your spouse is splitting assets with adult children, especially if they're not their children and it could be a second marriage, we have an issue.

And usually, someone will go to court to file a petition to, you know, I don't want my stepchildren to have the assets, I need the assets.

So it becomes a big issue and unfortunately, the courts are the ones who make all the decisions. So the court's going to make the decision about who's going to serve as personal representative executor of the estate.

The court's going to make say, "Okay, the laws of intestacy say, 'Surviving spouse, you get 50%, children, you get the remaining 50%.'" There is no, unless you can compromise, but there is no compromise the law is the law.

So, what should you do?

Create an estate plan, you should create, you should make sure your wishes are accurately and clearly reflected in a will or trust.

If you're going to treat a beneficiary differently than the others. Maybe you have, you know, you're going to treat children differently, or a sibling if you're leaving money to siblings, make sure that the language is clear and leaves no subject to interpretation.

So an example would be: I have a client who has two children. One child is highly successful, and the other child is just as successful but in a public interest job. And the mom wants to leave more assets to that child than the other one, because in her heart, she feels like the other child doesn't really need her assets.

That's fine, but we need to be very clear in the document what we're doing. And, you know, sometimes we'll make an affirmative statement saying, if you're going to disinherit a child, we will say we are not providing for child number two, because we feel that they have substantial assets already. And that way it shows the court and everyone else, it was discussed, it was talked about, it was decided.

There's not much you can do if that child who's being disinherited, there's not much they can do to convince the court otherwise. I mean, we'll talk about a few factors later, but to be as clear as possible, is the goal.

So, another thing that's been coming up a lot lately, and it does venture into the state litigation arena is, "I can use online drafting programs, they're cheaper. It's easier than making an appointment with an estate planning attorney."

And you know I hear that quite often, or sometimes I will, a client will come to me who's loved one has passed away, and hands me a will that was drafted online.

And so, you know, when I started practicing in this field, I was primarily in the state administration attorney, meaning that I would meet with the client who's lost a loved one, I'd walk them through the process of opening the estate, marshalling the assets, obtaining valuations. And then review with them the will and advise them on how distribution is to be made per the provisions of the will.

Over the past few years I've seen some pretty crazy wills, and I tend to be the bearer of bad news, because online documents are cookie cutter, it's a cookie cutter approach.

And so there are a lot of provisions that are in there, or maybe there aren't that need to be in there, but it makes your will ambiguous, which means that it's subject to interpretation, which means it could be subject to estate litigation. Someone's not going to be happy. Or, your personal representative is going to look at it and say, "I don't know how to make distribution. It says that I should give it equally to the children, but then the next paragraph says that I have the discretion to distribute how I see fit. And I don't think Child A should have as much as Child B."

So if there is, you know, we want to make sure that, again, we're clear. Estate planning is not a check the box transaction and nor is your will a throw everything, including the kitchen sink document. Your estate plan document should be properly drafted and customized to your individual circumstances.

That's the only way you can ensure that your estate is settled quickly and incorporate in accordance with your wishes and hopefully without any conflict, or at the very least minimal stress.

I have some clients that come to me, even some attorneys, when we're in the middle of a litigation, saying, "Well they have a no contest clause. So don't object to it, because they're not going to get anything if you object to it."

These clauses are called in terrorem clauses. And sometimes a client will know, like a parent will come in and say, "I know my kids don't get along." Unfortunately, I know there's going to be arguments about personal property, about who loves each other a bit more, you know, this one was my favorite. And the client says, "As much as I try to dispel that, it's going to happen. So I want a no contest clause in my document."

Well, the problem is, is that you can have a no contest clause. But at Maryland and surrounding areas, basically say that those clauses have no legal effect if there is what they call 'probable cause' to challenge a will.

So, if a mom leaves her son 10% of her estate, and the remaining estate to her cabana boy, and you have proof that the cabana boy drafted the will online for her and made her sign it, you may have a case to overturn the will.

Right. But if you're just unhappy because you receive 10% and the cabana boy, I mean obviously being dramatic, but the cabana boy gets everything else, and you can't prove that the cabana boy forced her to do this or forged her signature, you're going to have a very lengthy litigation and it may not go your way.

So, no contest clauses can be used, it could deter people from filing frivolous lawsuits.

But if you think that you have a reason, you know, "Well, my mom had Alzheimer's, I don't know how the heck she can sign her will," you can go ahead and challenge it, and that challenge clause has no effect.

So, if there's a time and place and in a way to use the no contest clauses, but they are not ironclad.

Alright, so my second point is, and it kind of goes with what I was just talking about is, do not include the beneficiaries, or your heirs in the planning process.

Now I'm not talking about, you know, my daughter has to take me to the meeting. That's not what I'm talking about.

What I'm talking about is, you know you have your ideas, we need to make sure that you're communicating them to your estate planning attorney, and that you're not letting a child run the show whether it's, you know, in good faith or not. Because what happens is there's something called undue influence, and Maryland defines undue influence as, "The inappropriate pressure or unlawful persuasion applied by a trusted, more powerful party on a less powerful party to enter into a legally binding agreement against their will."

Which relationships might be prone to undue influence in estate litigation? It's usually parent/child. Sometimes it's husband/wife. I've seen professionals, you know, employers, I mean it's I've seen some things but usually it's in a parent child context. Moms living with daughter, and the daughter is calling the attorney and saying, "My mom wants to change her documents," and then comes into the meeting. And I always ask the child to leave the room so I can talk to the parent directly, by ourselves, to have a candid conversation.

But if you decide that you want to leave, your daughter's taking care of you, you live in her house, and you decide that you want to leave her the home, let's just make sure we're clear, and we draft that accordingly. If you don't, a sibling may be upset, another heir may be upset and they're going to say, You forced mom to do that.

You had control over her because you were taking care of her. And then we're in a big mess.

We want to avoid having the beneficiaries part of your planning process.

I can tell you, I had a wonderful client. She had three children: two lived in another state and one was local. She was self-sufficient, in essence, the one that was local took her to doctors' appointments and such, but one of the daughters who lived in another state called me and said, my dad needs to update his estate planning documents. Okay. And the daughter said I'm coming into town this week and I, you know, I'd like to set up an appointment.

And when they arrived, he barely looked at me. We came into the office we sat down at the conference room table. And I turned to the dad and I said, "Okay, well what changes do you want to make?" And the daughter immediately started speaking, he didn't say one word.

And she said, "Well, he wants to leave his home to me. And he has this million dollar life insurance policy and he wants to make me the beneficiary."

And there was little bit of silence and I asked her, I said, you know, "Is it okay if I talk to your dad by himself?" And she wouldn't leave the room.

So it's a big red flag for me.

And, you know, something like that is going to get everybody in trouble. But I explained undue influence. I explained to her what this looks like. I also explained to her what elder abuse looks like. And she finally left the room, and the dad said to me, "I don't really want to leave her those assets. This is her idea, she thinks that she should get more, and she'll take care of her siblings, you know."

And so as we further delved into it and said, you know, she was threatening to move them into a nursing home.

And so, you know, we called Adult Protective Services so he can get represented, but we took some steps to make sure that he was not being unduly influenced by her. And so what happened was that, I guess a couple months later, he returned to my office and he revised his will. And he left his daughter a very small amount, and we explained why. That's going to avoid, actually he's passed away now and we didn't have to go to court. She was very, very upset but because we explained it, she could not, could not do anything.

One of the other things that I always like to talk about is sometimes we'll have family meetings, and the families gets along fine. And I always have a follow up meeting with my clients saying, "Oh a family meeting went well and your children are lovely. But I want you to know that you should not assume once you both are gone, that everyone will get along. So let's make sure that your documents are clear."

You know, death and money, have a weird effect on people. And sometimes there are, you know, when your parent passes away or a loved one passes

away there's some very important decisions to make. And the decisions affect all beneficiaries.

And if people are stressed about those decisions, or there's a person who's in charge that's not really part of the family, there's a lot of conflict, and everyone is, you know, allowed to file something in the court to object to a disposition of an asset or, you know, I don't want the house sold I want to keep the house so you know, so there's always something.

We don't want the beneficiaries in the process in the beginning. If you decide that you want the house to go to someone else, you tell your estate planning attorney, and they will draft it in the document.

If you don't tell your state planning attorney, it doesn't get drafted in the document, that child's not going to get that asset.

I'm saying this a lot: communication is key.

Discuss your plans with the people who are affected by it. Discuss your plans with your kids. It's a very difficult conversation, I get it. Some parents are like I don't want my kids to know what I'm doing. And I can appreciate that. And if you're treating your children equally, that's fine, but if you have particular assets that one child may want over another, that may not be fine.

They're, they're difficult conversations, sometimes I have them in my office, but, you know, to communicate your plans for your money, your assets, requires your family members to confront their own family dynamics.

I am in the middle of a litigation now where the youngest child, the other children think the youngest child was the favorite, and they were treated a little differently. I did not draft the will when they came to me and we're arguing all this. And it is very hard because now we're in depositions and all the skeletons are coming into the closet. The stories are coming, and don't be fooled estate litigation is really purely emotional.

But, you know, if while you're alive you can communicate with your family about what your wishes are and what your decisions are, then you should be, you know, it would alleviate a lot of the hurt feelings and the issues that can happen when you pass away.

Having a conversation with your family also can eliminate the fact that if they say, "Well, mom wasn't competent," it'll eliminate that. Having a clear conversation to explain your decisions proves that you understand what you're putting in your will, what the effect of the language is in your will. It proves that you understand what you own, and it proves that you know who you want to leave your belongings to.

I have, you know, if you're saying, "Hey Diane. I'm not doing it. I'm not talking to my clients." Well, I would say the very least, prepare a separate, signed, explanation letter: "Dear daughter, I did not treat you

both equally, because I feel like you have sufficient assets, or because you were not part of my life for the past five years." Whatever the reason is, explain to them why you left them out because it's, or left them out or treated them differently, because it's that child that's going to file something in court to object to the provisions in the will. If you have a letter, and usually, if you have a letter you would send a copy to your attorney, that takes all the steam out of their argument.

You know, we would have a letter and say well you know, "Your Honor, she wrote a letter. She communicated. This is the reason why."

You could also write a generic letter to all your kids to say what your goals were. Why did you leave certain assets to an individual person?

You know the letter should be handwritten, or at least signed and dated. It's not, you know, necessarily something that we say, "Hey we're doing this because we're producing it for court," but it is a letter written by you to your family. And I think that when a child or an unhappy heir gets a letter like that, and they see that's in your own words and you signed it, it's much more, much more difficult to make a challenge. And, you know, at least you know you've communicated what you want it.

You know death is an emotional event, and it triggers emotional reactions. And I think by providing a writing, if you haven't spoken to them beforehand, it just avoids the future trust contest, or a will contest, a "caveat" what they call, or even estate conflicts that can occur while distribution's happening. Just takes all that out.

So we talked about family conversation, we talked about maybe having a writing. I talked about, if you have the conversation sooner than later, you'll be of sound mind. Right? They can't say well mom didn't know what she was doing she was incompetent. We talked about an explanation letter. I'm big fan of that explanation letter.

I want to talk about second marriages because this is where communication, I think, really comes into play.

In the US, I think they say 60% of couples are in a second or subsequent marriage. And usually, each party has at least one child from a prior relationship.

And I read a stat, and I put it down here. In 2008, one third of people divorcing were actually re-divorcing, so they divorced got married and they're getting divorced again.

In blended families like this it's important to make sure the children from your first marriage are not, you know, unintentionally disinherited.

It happens a lot. And whether it's intentional or not. And if, you know, so I can say, if you don't have a prenup, and you get married for a second time or third time or fourth time and you hold assets jointly or your will says everything to my spouse at my death. It's been my experience, and I hate being negative, but it's been my experience that

if that second spouse lives for quite, you know, a few years, your children from your prior marriage are not going to get anything.

And so we need to make sure that your documents reflect what your wishes are. It may be that you want it that way, I don't know, but you know we want to make sure that we're not intentionally disinheriting children from a prior marriage. That creates a lot of estate litigation.

You know, "Dad wanted my step mom to be taken care of, but he certainly didn't want her to have the assets. But the will says everything to my spouse."

So, you know, like I said, these online trusts and Wills that's check the box. This is something that you should have an estate planning attorney, work with you on. Alright, because that estate planning attorney, like I do, I always ask, "What are your goals? What are your assets? What do you think, should we hold assets and trust for your spouse, and then upon your spouse's death and it goes down to your children from your prior marriage?"

And it is a design, you have to design your plan. But if you design it, and we come up with great detail, and it's clear in your document, I mean anyone can challenge it but they won't be successful, it's crystal clear.

So, you know, I always say prenup if you're getting a second marriage, but if you don't want to enter into a marriage on a what people consider a 'negative note,' let's make sure that your estate planning documents are reflective of your wishes.

Because I had a client, love her to death. She was in her third marriage. Her husband, he was a gem, he was a sweetheart, but they decided they were going to hold everything joint.

And he had two children from a prior marriage, and they did. They prepared a will, with like an online service, and it said 'everything to my spouse.'

So what happened is that she inherited all of his assets and his kids received nothing.

Luckily, she's one, like I said she's a gem, that she redid her will, and made sure that his children were included in the inheritance. So his two children shared the overall estate with her two children.

Not many people do that. So we would want to make sure we prevent that from happening, you know, and I mean, sooner than later.

If you are in the process, if you're engaged, or you're getting married for the second time or a subsequent time, one of your 'check the box' items should be to meet with an estate planning attorney, especially if you don't want to have a prenuptial agreement. And that's really just to protect your family.

I've alluded to it, I've just talked about it, but asset titling and beneficiary designation.

So, what assets does your will control? And sometimes this can get very confusing. Your assets, the assets that are in your sole name: bank account, and that would die in pocket, that's what my will controls.

But if I have an account joint with someone, my child, my husband, my will doesn't control that.

Joint tenancy is a state law. And so, I see something like this, where my client will come up to me and say, "I have this large money marketing account. It has, you know, like hundred thousand dollars, whatever it is, in it. And I'm going to put my daughter on it. She's a doctor, but I'm gonna put my daughter on it. And when I die, she'll make sure that everybody gets the money."

Not a great plan. Subject to estate litigation. And then I'll tell you why. Because that daughter may say, I have $250,000 now. It is hers by operation of law, that account is hers. And so, it's up to her if she wants to share with her siblings. And sometimes, like I said, don't assume that everyone's going to get along when you pass away.

Sometimes they're saying, I'm not sharing with them. Or sometimes the asset is so large that there's a gifting consequence to it. We can all gift up to $15,000 per year to someone. But if I have a, you know, $300,000 account, it's just my sister and I, I can incur and use up some of my gift tax exemption. So there's a penalty for me to share the money.

We want to make sure when you are talking to an estate planning attorney, normally they'll have you complete a questionnaire. Right. And everyone's like, "Oh my gosh, why are you asking for so much information?"

This is why. We want to make sure that you understand, or anyone understands, that joint tenancy is not controlled by your will.

Beneficiary designations are that: any asset that has a beneficiary designation and you have that beneficiary designation completed, that asset's not controlled by the will either.

I think of life insurance, that's the easiest one. Unless you make the estate the beneficiary, your will won't control it.

Now going back to adding a child on, you know, I sometimes, I see a lot of people coming in saying, "Oh, my son's on my house." You know, some people do that to avoid probate. Probate's really not that bad. That's a whole other webinar. But probate's really not that bad if you're in Maryland.

But what happens is sometimes, you have two children, you have one son, because he lives here, he's on the deed. He receives the property when you pass away. That other child is going to say, "Whoa wait a minute. What happened? How come he received a $400,000 house, and I'm getting

$20,000." Estate litigation. Lawsuit. Right, there's a big, you know you're not treating them equally like you wanted to.

So when your estate planning attorney has that client questionnaire they look at it, say, Oh, your son's on that house, but you have a daughter.

Are we equalizing? You know and there's a whole conversation that has to happen. Your estate planning documents should mirror your wishes. Asset titling and beneficiary designation should also mirror your wishes. So it may be that you have to change a few things.

You know when you add a co-owner, you also lose control. Jointly owned assets are now exposed to the co-owners creditors, possible divorce proceedings, possible misuse of assets.

So we want to make sure that you're being protected. And if you say to me, "I want my son and daughter to share equally." I'm either going to say, take your son off that account, or put her on. I mean, you know, you have to figure out a way, otherwise you're going to get a very upset child when the time comes, and he or she realizes that they're not sharing and, you know, taking the house as an example, "I'm not sharing in the largest asset that mom has. How come you get it?" And then there becomes an issue, you know, you took advantage of mom, you did this. I mean it could be a whole range of issues. Family dynamics comes up. Lawsuits happen. Money is spent. And I'm talking thousands of dollars to go back and forth in depositions, things like that.

We can avoid all that by making sure you're working with your estate planning attorney. You're coordinating all your assets to be distributed prejudicious.

It is important, I mean, there are some times where we'll say well you know there's a $500,000 house and you have a $500,000 life insurance policy, you know let's see what we can do here. But it is important to understand that there is no such thing as a convenience account in Maryland, at least and actually the surrounding jurisdictions.

You know, I'll have some clients say, "Hey, I put my daughter on there so she can write my checks if I can't." That's still her account when you pass away. It's not going to be distributed to anybody else. We can take care of that but making sure you have a financial power of attorney. And you can name your daughter the agent for you if you are unable to write checks. But then when you pass away that asset will go into the estate pot per se and be distributed.

So there are things that you can do.

00:34:00.000 --> 00:34:10.000
These are all things that you can do to avoid being, well not you being important because you'd be gone, but for court and litigation and hatred it's very emotional and very nasty. So there are things you can do to prevent all that.

So my fifth point, and this is a big one actually: estate planning is not one and done.

In fact, if it's not regularly updated when your assets change, family situation changes, or laws, you know tax laws change, your plan may be I don't want to say worthless, but it may not be effective when your family needs it.

And what's more, is that, you know, if you fail to regularly update your estate plan, it can create its own unique set of problems that can leave your family sometimes worse off than if you had never created a plan at all.

Tax and estate law changes all the time, and in fact I think we're looking at a major tax change in the next year or so. So your estate planning attorney should be getting ready to send out notices of what's happening.

But that's your estate planning attorney's job. I feel. I feel it's my job. If there's a major tax law change, and I know that it's going to affect your documents, I feel like I have to let you know.

I can tell you a story, I'm all about stories. But a few years ago, I had a client, let's call him Jerry.

Jerry owned a farm, and a very profitable business. And we drafted a very complex estate plan. He was in his third marriage, but he was married for 25 years so far with his third wife. He had one son from a previous marriage and his current wife had a daughter, and his plan, because they had been together so long, you know his plan was to leave the son the business, and then his step daughter was to receive assets to, you know, equalize the distribution. So we'd say, the business was worth $100,000 we want to make sure she has on $100,000. And then anything that was left over, they would split equally.

Well the tax laws had changed, the estate tax laws have changed, and I sent Jerry letter. And I said, you know, this is what's happening I think it affects your estate plan. And I think we probably need to adjust the tax language that's in your documents so we make sure that your wishes are still going to be fulfilled, and your family's protected.

And he was hesitant, no one likes to pay an attorney apparently. But he didn't really want to come in and spend money on an update.

So I wrote him a letter. Explained to him again saying hey we talked, you know, I just want to make, are you sure? I know this is going to be an issue."

And, and he never replied back. And then he passed away, maybe about a year later, and he had never updated his documents. And what happened is the consequence of him not updating his documents is that instead of having no estate tax, there was $680,000 of estate tax involved. And the trustee, who was Jerry's son, ended up liquidating the majority of the non-business assets, I was a part of this but this, they came back to me,

but he liquidated most of the non-business assets so they could pay the IRS. Well, those non-business assets were ear-marked for the step daughter. So the step daughter really did not, she didn't inherit the business, and so she received pretty much close to nothing.

So she's sued her step brother. And the step brother didn't want anything to do with it. So litigation started, and it went on for three years. He ended up bankrupting the business that his dad had for 40 plus years. And the litigation was just unreal. It cost hundreds of thousands of dollars, four different attorneys, and it was just unfortunate. And they don't speak to each other at all anymore and they pretty much grew up together.

And so, you know, updating your documents is important. Don't be like Jerry.

If your estate planning attorney notifies you of a law change, and can illustrate how you're going to be affected or how your family's going to be affected, I would listen. And perhaps act, you can get a second opinion, that's not a problem, but update your documents.

Another thing about updating a document. I represent families. So sometimes when a child is going to college, they're 18 years old, right, but they're considered legally an adult. They should have a will. They should have powers of attorney.

And as you get older you accumulate more assets. You should be updating your documents.

You get married, you should be updating your documents. You have children, you should at least look at it to make sure you're updating your documents. Your children get married. "I don't like my daughter in law. I do like my daughter in law." You should make sure that your documents still reflect what you want.

Sometimes people sign a will, they put it in a drawer and never think of it again, and then they mistakenly disinherit a child that wasn't born at the time, they realized that they left their sister, $100,000 and she didn't need it.

So, always, always update your documents when a major life event happens.

And I like to tell my clients that they should review their plans every three to five years. Or, and this is a bit, if you have an illness or maybe you're noticing some cognitive issues. We should, you should always meet, I always say come in, let's talk about this, let's make sure that, you know, your wishes are still up to par, the tax law you're up to date on everything.

I just think it's better to be proactive than reactive. Because sometimes if someone comes to me and says, you know, it's usually a child, they'll say, "Mom has Alzheimer's or has dementia. She's fine. She has great days, she has lucid moments." It just leaves everything subject to interpretation. Alright, so what's going on? You know, do I need to get a

doctor to certify that your mom understands the changes that she wants to make? It just becomes another issue.

But if something happens, you should always think about, and of course I'm an estate planning attorney so I'm saying that, but you should always think about your documents and make sure that they are still the way you want them to be.

So, thank you for joining me. All right, I'm going to open it up for questions, but I just wanted to again say that the main reason for estate litigation, really is lack of communication and improperly drafted wills and trusts, and sometimes they're improperly drafted because communication's not there, either with your attorney, or actually, your attorney.

But if you can take some or all of the steps, estate litigation can be avoided, for the most part. And you know, like I said, we should try to take preventive causes of action before it actually starts, and that'll save your family money, because, you know, thousands of dollars in costs, and it will maintain family harmony.

Nothing makes me sadder than when I've known a family for a long time, they get along for the most part, and then, you know, mom treats a child differently, and I say, Sally, you're going to tell your kids this is what's going to happen. "Oh yes, yes." And then they don't. And then there's hatred, and they don't talk to each other anymore. That's very sad to me.

Again, I understand that this slideshow is going to be in a link, and you can access it anytime, but if you have any questions for me now, I'm happy to answer them. If you want to email me, my email address is there, and my if you want to call me my phone number's there.

Does anyone have any questions?

00:43:09.000 --> 00:43:14.000
My that guy.

Attendee: I have a question. Can you hear me?

Diane: I can hear you.

Attendee: All your references, or to children. Are grandchildren of equal standing with children in terms of challenging a trust or a will?

Diane: Now, only if a child of yours is pre-deceased, and their share is going to drop down to your grandchildren, then they would have an equal footing.

But if your two children are still alive, then the grandchildren don't have, and in your will or your document says, "I leave everything to my children," your grandchildren don't have standing.

Attendee: You mentioned if one of your children was pre-deceased.

If you made changes in your trust, then, it took account of the fact that the one child was pre-deceased. And all the assets are going to go to the remaining child and his children. Does the first child's children have a standing there?

Diane: They well, standing, they do have a standing to object if they want, they would have to prove why, you know, how they're entitled to assets there. I mean, it's not an automatic right. So if you have a pre-deceased child and you came to an estate planning attorney and said I just want everything to go to my surviving child. They would have to prove that you were coerced, they would have to prove that you didn't understand what you were doing. But, you know, I think everyone has some sort of standing to object to being omitted. But, it won't be that successful.

Attendee: Okay, well that was my question.

Diane: Okay, well great! I mean the key is to be very clear in your documents and that's fine. Thanks for the question.

Okay, very good. Well, I enjoyed the presentation, learned a lot. Most of it didn't apply to me because I don't have children from a previous marriage, I was never previously married. And, but I did marry a woman with two children and one of them became pre-deceased, and has two children we no longer have a relationship with. So we haven't included them in our trust.

Diane: Sure, sure. And that makes perfect sense. And then as long as your trust states that and doesn't leave anything to the children of the pre-deceased child, you should be fine.

Attendee: Well the trust doesn't state specifically that they're being excluded it just doesn't include them.

Diane: Right, it just says it goes to this child, correct?

Yes, yes. Okay. So I think that's good. I think you're good. Thank you.

Any other questions?

All right. Well, like I said, you have my contact information. You have my phone number, please feel free to call me. And I thank you for joining me. Everyone have a great day!