

ESTATE PLANNING UPDATE

A Review of Current and Pending Issues in Estate Planning, Probate and Trust Administration in the State of Washington



PRESENTED BY:

STEPHANIE R. TAYLOR

RANDALL|DANSKIN

A Professional Service Corporation

DEATH IS NOT THE END.
THERE REMAINS LITIGATION
OVER THE ESTATE.

- AMBROSE BIERCE



STATUTORY UPDATE

- **UNIFORM ELECTRONIC ESTATE PLANNING DOCUMENTS ACT**

- SB 5787, signed into law on June 6, 2024
- New Chapter 11.135 (Effective June 6, 2024)
- This Act is to be construed and applied to:
 - Facilitate electronic estate planning-related documents and signatures consistent with other law; and
 - Be consistent with reasonable practices concerning electronic documents and signatures and continued expansion of those practices.

STATUTORY UPDATE

- **ESTATE TAX RETURN FILING REQUIREMENTS**
 - Eliminate Estate Tax Filing for estate passing to surviving spouse containing qualified residence
 - HB 1867, signed into law March 14, 2024
 - Revisions to RCW 83.100.050 – effective January 1, 2025

STATUTORY UPDATE

- **FAMILY SUPPORT AWARD**
 - ESSB 5589, Signed into law on March 13, 2024
 - Revisions to RCW 11.54
 - Effective August 1, 2024

CASE LAW UPDATE

EXERCISE OF POWER OF APPOINTMENT

- *In the Matter of Tony Vivolo Residuary Trust F/B/O Nicolas Vivolo and Estate of Nick Vivolo*, 2024 WL 5118405 (Div. 1, 12/16/2024) (Unpublished)
- Decedent's purported exercise of a power of appointment was determined to have failed with respect to a trust that was not specifically mentioned in the exercise of the power.

CASE LAW UPDATE

- **STANDING IN TEDRA LITIGATION**
 - *In re the Matter of Estate of McBrayer*, 2024 WL 4825750 (Div. I, 11/19/2024) (Unpublished)
 - Claim for breach of fiduciary duty was dismissed for lack of standing when daughter sought to remove her sister as PR of the father's estate when mother was the sole beneficiary

CASE LAW UPDATE

RES JUDICATA

- *Garza v. Bayley*, 2024 WL 4825753 (Div. I, 11/19/2024) (Unpublished)
- Petitioner was precluded from filing a new TEDRA Action relating to a closed probate; Court held that causes of action had been pled in the probate and that the filing of the Declaration of Completion precluded Petitioner from asserting claims against the PR

CASE LAW UPDATE

- **IN RE ESTATE OF FERARA, 540 P.3D 194 (DIV. 1, 12/26/2023)**
 - The Court created a **Constructive Disclaimer** over Trust Property when a Beneficiary refused to accept the same from the Trustee;
 - Trustee was held to have not breached its fiduciary duty

CASE LAW UPDATE

- **IN RE ESTATE OF MNATSAKANOVA, 2024 WL 692685 (DIV. 1, 2/20/2024)
(UNPUBLISHED)**
 - Family Support Award to Estranged Spouse
 - Couple separated at the death of the wife– no children of the marriage
 - Decedent had alleged that husband was abusive
 - Decedent had changed her Will and hired an attorney to initial marriage dissolution, but died prior to the filing and finalization of the proceedings

CASE LAW UPDATE

- **IN RE MARRIAGE OF COONEY, 2023 WN.APP. LEXIS 2264 (DIV. 1, 11/27/2023) (UNPUBLISHED)**
 - Unvested Trust Interest is a “Mere Expectancy”
 - During dissolution proceeding, Husband was ordered to produce copies of Trusts in which he was named as a beneficiary; however, proceedings settled prior to disclosure
 - Following settlement, Wife found out that, following the divorce, Husband’s grandmother passed and Husband was beneficiary
 - Court held that the divorce settlement could not be set aside for fraud because Husband’s interest in the Trust was a “mere expectancy” until death of grandmother

CASE LAW UPDATE

- **IN RE H. & C. S. LIVING TRUST, 2024 WN.APP. LEXIS 1345 (DIV. 1, 7/8/2024) (UNPUBLISHED)**
 - Non-pro rata trust funding of Community Estate Following Disclaimer
 - Surviving Spouse “disclaimed” assets equal to the WA Estate Tax Exemption into a “Shelter Trust”
 - Surviving Spouse engaged in non-pro rata funding of the “Shelter Trust”, the remaining assets (real property) stayed in a “Marital Trust” over which he retained powers to amend or revoke;
 - Surviving Spouse gifted real estate from the Marital Trust to his favored child;
 - Following his death, the other child filed to invalidate the gift;
 - Appellate Court held that the gift was valid

CASE LAW UPDATE

- **IN RE REVOCABLE TRUST OF CLARK, 2023 WN.APP. LEXIS 1926 (DIV 1, 10/9/2023) (UNPUBLISHED)**
 - Breach of Fiduciary Duty and Attorney's Fees
 - Irrevocable trust was to be divided, but Trustee failed to do so;
 - Court held that fiduciary made improper distributions to contingent beneficiaries; failed to divide trusts; paid referral fees to his wife and awarded beneficiary's attorneys fees – all without a trial

CASE LAW UPDATE

IN RE ESTATE OF DAHLSTROM, 2024 WN.APP. LEXIS 1514 (DIV. III, 4/25/2024) (UNPUBLISHED)

- Burden of Proof for Lost Will
- In 2008, Decedent informed charity that she was naming them as a beneficiary of her Will and provided them with an unsigned copy of the same;
- Following her death, no one was able to find a signed Will;
- Charity sued Estate, claiming that unsigned Will should have been probated, but offered no witnesses other than the drafting attorney who had no independent recollection of the signing
- Court held this evidence was insufficient

CASE LAW UPDATE

PERSONAL SERVICE AND EXPLANATION OF PETITION ON VULNERABLE ADULT

- *In re Vulnerable Adult Petition for Cox*, 2024 Wn.App. LEXIS 1351 (Div. III, 7/9/2024)(Unpublished)
- This case involved the service requirements for a VAPO Petition and whether attorney's fees were appropriate;
- Standard of proof for VAPO – preponderance of evidence v. clear, cogent and convincing evidence;

CASE LAW UPDATE

WITNESS MUST BE PRESENT AT SIGNING OF WILL

- *Goldberg v. Davidson*, 2024 WnApp LEXIS 131 (Div. I, 1/29/2024)
- Following Decedent's death, Decedent's daughter was named Administrator of his intestate estate;
- Decedent's "friend" later came forward with a Will that she alleged Decedent' signed four years earlier;
- "Witnesses" to Will told Private Investigator that friend had brought them Will, rather than Decedent; - they later recanted this testimony in Court;

CASE LAW UPDATE

FAILURE TO SERVE ALL PARTIES TO TEDRA ACTION

- *In re Estate of Stephens*, 2024 Wn.App. LEXIS 325 (Div. III, 2/20/2024) (Unpublished)
- In a dispute over competing Wills and breaches of fiduciary duty, a TEDRA case was dismissed without prejudice for failure to serve all necessary parties and comply with Summons requirement

CASE LAW UPDATE

ATTORNEY NOT PARTY TO TEDRA MATTER IN DISPUTE OVER FEES

- *In re Madeline Theide Trust*, 2024 Wn.App. LEXIS 495 (Div. III, 3/14/2024) (Unpublished)
- A removed Trustee made improper distributions to his attorney, based upon attorney advice;
- In TEDRA proceeding, the parties to the Trust resolved an issue, assigning claim against the attorney to the Trustee;
- Trustee obtained a judgement against attorney;
- Attorney attempted to utilized TEDRA, but Court held that TEDRA did not apply

CASE LAW UPDATE

EVIDENCE REQUIRED TO REMOVE TRUSTEE

- *In re Bernice K. Price-Cameron Trust*, 2023 Wn.App. LEXIS 2164 (Div. I, 11/13/2023)
(Unpublished)
- A beneficiary must show “reasonable cause” to remove a trustee
- Unauthenticated evidence was inadmissible and did not amount to “reasonable cause”

CASE LAW UPDATE

FOREIGN POWER OF ATTORNEY

- *In re Estate of Sooke*, 2003 WnApp LEXIS 1694 (Div. I, 9/5/023) (Unpublished)
- Decedent had executed a power of attorney in Canada prior to his head injury;
- Decedent's mother, who was named as the Attorney in Fact, transferred property to herself and her other child approximately 7 hours prior to Decedent's death;
- Following death, Decedent's wife challenged the mother's actions;
- Court held Canadian law controlled and that the transfer of real property was not ratified and thus, failed.

Questions?