

ISSUES IN ESTATE ACCOUNTING THAT CAN RESULT IN ESTATE DISPUTES

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SUMMARY

- Understand the sources of a dispute
 - Consider the five sources of conflict – emotions, values, structure, history and communications
 - Examine the relationships between the parties
 - Consider the element of power

- Anticipate disputes at the outset
 - Review the will
 - Emphasize matters such as the duty to account and the duty to disclose for the estate trustees
 - Provide the estate trustees with the proper format, guidelines and knowledge of problem areas in estate accounting

- Consider beneficiary approvals in some circumstances

- Once accounts are prepared consider additional disclosure

- Common issues in estate accounting
 - Format of the accounts
 - Valuations
 - Capital and revenue allocations
 - Estate trustees' compensation including:
 - The “usual formula” and the five factors
 - Pre-taking
 - Transfers to trusts and in specie
 - Lawyer as estate trustee
 - Compensation on compensation
 - Non-arms length transactions

- Private corporations
- Joint assets
- Capital encroachments
- Accounts that do not balance
- Legal and accounting fees
- Income Tax issues
- Delays

- Contested Passing of Accounts
 - Negotiation always advisable
 - Litigation – as determined by the Rules of Civil Procedure
 - Respond to each Objection in detail
 - Mediation
 - Advantages in costs, time and possible options
 - Mandatory, court ordered or voluntary
 - Stage of the process for mediation
 - Choice of a mediator – expert or not
 - The mediation brief – importance to the process

- Conclusion
 - Prepare
 - Anticipate
 - Disclose
 - Negotiate