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A DOWN ECONOMY LEADS TO INCREASE IN PROBATE LITIGATION AND ELDER ABUSE

Next to the yellow-page salesman, the firm is regularly solicited by purveyors of self-help books and seminars on what attorneys must do to survive these tough economic times (anyone wishing to inquire further, apparently Evan H. Farr has all the answers for attorneys with struggling practices). I did not realize it, but according to this fellow, attorneys' estate planning business has dropped eighty percent (80%). The rationale offered to explain this "statistic" is that families' wealth has diminished, and thus no one wants a trust anymore. Golly. What should I do?

But before I decide to close the firm or even contemplate Mr. Farr's internet solicitation to be credible, let me take the opportunity to remind my colleagues in the estate planning legal community that practicing in this area does not mean filling-out forms. To the contrary, attorneys in our profession have never been busier. Why?

- 1) The single most important reason for a family to prepare a revocable living trust is to avoid the expensive, grueling process known as probate. In Arizona, when one dies with assets in excess of Fifty Thousand Dollars (\$50,000), the estate must be probated pursuant to Arizona law. From simply a financial prospective the fanciest, most complex trust could not cost a family more that Five Thousand Dollars (\$5,000), and in reality, very few estate plans should exceed Two Thousand Five Hundred (\$2,500). By contrast, I have yet to represent a party in any probate litigation where the legal fees are not at least Ten Thousand Dollars (\$10,000). Sadly, I find that during probate litigation, family members fight over their deceased-family member's assets, and in turn, deplete all the assets in payment for legal fees.
- 2) Even young families that are just starting their lives together must have properly-drafted wills prepared. It never ceases to amaze me that couples visit the firm to discuss estate planning and readily mention probate avoidance and taxes benefits. Then I ask them, "**But what about your children?**" **And the couple is speechless.** The single most important feature that a will offers is the provision naming the guardian and conservator for your children in the event that both you and your spouse pass away or become incapacitated. As an attorney, I can tell you that there is nothing more expensive and highly-contested than a guardianship hearing, where the attorney fails to present properly-drafted wills to the Court. What results are

grandparents, aunts, uncles and trusted family friends then engaging in fierce legal battles to claim custody of children that have just lost mother and father. A custody battle in the Probate Court is much worse than the custody battles in the Divorce Court. It is of paramount importance that every couple has that good talk together and decides whom will care for their children in the event something happens.

- 3) Easily the single biggest rise in business has been the Elder Abuse matters. Traditionally, and in more prosperous economic times, cases would include predatory lending acts against grandma and grandpa (i.e. reverse mortgages), nursing home abuse and disputes with the state and federal agencies over various senior benefits. Abuses by family members would take place, either in a victim's final days before passing, or more often in the form of probate litigation – after an individual passed away.

Today, and as a direct result of unemployment, foreclosures and bankruptcy, seniors are the targets of their family members, searching for ways to profit or simply to make ends meet. The rationale has become: why wait for grandma and grandpa (or mother and father) to die before I can take their money? In just the last few weeks, I have worked on the following cases:

- a) A lawsuit was brought against the son of an elderly client. The son was mad that his mother did not name him executor in her will. Instead of waiting for her to die, he forced her sign a financial power of attorney, giving him full control over the mother's estate. Usually, individuals committing this sort of fraud just add their names to mother's bank account and gradually draw monies. The son went a step further and withdrew all the money and deposited it into his account – at the same bank. And yes, the bank did not even question the transaction.
- b) A woman that recently lost her home to foreclosure, promptly moved into her parents' home. Soon thereafter, the woman and her boyfriend signed a lease (in the name of the woman's parent) at an apartment complex; quickly moved the parents' furniture to the apartment; and ordered the parents to get out of the house.
- c) While often described as a folk tale, there is an increasing amount of "death-bed wills" flying through the Probate Court. For you movie enthusiasts, refer back to one of the early scenes in "Superman Returns". Unfortunately, Lex Luther seems to be making many house-calls in Phoenix. And for people in financial distress, any elderly person (regardless of actual wealth) now seems to fit the part for the "wealthy old widow/widower". Despite the fact that Arizona Courts highly scrutinize death-bed wills to ensure compliance with the Arizona statutes, the fraudulent documents seem to fall from the sky.

If the economy is truly is a depressed state, then remember:

- 1) Stay away from the yellow-page salesmen and people selling self-help business advice to attorney via the internet.
- 2) No one knows the day that they will pass away.
- 3) If you want to prevent your family members from spending five (5) years in Probate Court fighting over your assets, and in the process, depleting said assets, it is time for a revocable living trust.
- 4) Anyone that has children, it is time to have that difficult conversation with your spouse. If something happened to both of you, whom will care for your children. Factors to consider in choosing your children's guardian are: a) does the guardian share our views on parenting; b) will the guardian live here and be able to keep our children in the same schools and close to their friends (when parents die, children need as little disruption to their lives as possible); c) will the guardian remain healthy and stable until our children are ready for college; d) will our guardian continue to raise our children consistent with the religion which we have raised them.

Obviously, there are many other questions, but these will help get you started. Just a discussion on those questions above, may take all weekend. Please have the discussion in advance of visiting the firm. I have witnessed some ugly fights between couples, as they decide whom shall be their children's guardian.

- 5) Keep an eye on grandma & grandpa and/or mother & father. Have dinner with them regularly and make weekly telephone calls. Do the little things that remind your family members that you are thinking of them. If you see family members start to slow down, keep an eye on them and keep an eye on your other family members. And of course, if your elderly family member is single or widowed, watch out for "Lex Luther". With the increase of seniors on the internet, you would be surprised how many of these cases start by seniors meeting a man/woman on the internet.

If the economy is truly dismal, then simply do what you must to protect your family. When you require legal representation, the firm will be here.