



Lowenstein Sandler's Trusts & Estates Podcast: Splitting Heirs

Episode 4 - The Case of the Laughing Heirs

By [Warren Racusin](#), [Michael Vito](#), Rabbi Michael Jay
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Rabbi Michael Jay: A priest, a minister, and a rabbi go to a professional seminar. The seminar leader says to each of them, imagine you are in a casket and your congregation is gathered around you. What do you want them to say about you? The priest says, "Well, if I'm in my casket, I want my congregation to say I was a good shepherd. I taught them the word of the Lord and that enriched their lives." And the minister says, "Well, if I was in my casket, I'd want my congregation to say I was a man of my flock. I rejoiced in their happiness and I comforted them in their sorrows". Finally, the rabbi, after thinking about it a bit says, "Well, if I'm in my casket and my congregation is gathered around me, I would want them to say, look, he's breathing".

Warren Racusin: From the law firm Lowenstein Sandler, this is "Splitting Heirs". I'm Warren Racusin. Death is often about sadness and can be tragic. Death is also about rituals, personal family and religious rituals, as well as legal rituals or processes. Today, we're going to talk about and hopefully demystify some of those legal rituals and processes. We're also going to talk about how those play out against the emotions and rituals of grief and how people cope with the loss of a beloved or sometimes maybe not so a beloved person. Oh, and one other thing, death or things about death are strangely enough often kind of funny. When my brother-in-law died, at the cemetery I happened to notice that the gravestone next to him was inscribed as follows. Here lies Sadie Schwartz, the greatest woman who ever lived. As we left the cemetery, I told my sister, I know how sad a day this is, but at least he's buried next to the greatest woman who ever lived.

We're joined today by my partner, Michael Vito. Mike is a lawyer here with Lowenstein Sandler who specializes in the administration of estates. We're also joined by Rabbi Michael Jay, the spiritual leader of the Jewish Community Center of Long Beach Island, New Jersey who's going to share with us his thoughts about the religious and spiritual ritual about death and what we need to understand and share with our clients. Picture this, a man dies. He has no spouse, no children, no grandchildren. He dies without a will, so we have no idea what his wishes might have been. What he does have is relatives. A lot of them. 40 next of kin and they're spread out all over the

world. Mike, that's a matter you actually handled for us. Let's talk first about what happens in the typical, if there is such a thing, estate, and then use that as a jumping off point to chat about our decedent and his laughing, or at least very happy heirs. Mike?

Michael Vito:

Thank you Warren. When someone passes away, our job is to wind up that person's financial affairs. That means identifying and collecting all the assets, addressing any debts or expenses, paying any taxes and distributing the assets as the person set forth in their will or other estate planning documents. Usually the first step is to probate the will if there is one, or start an administration proceeding in the court if there is no will. There are a lot of misconceptions about probate and how difficult or expensive it can be, so let's try to straighten those out. So what is the whole point? Well, probate is a Latin word for proof, and that underlies the policy behind this entire process. When someone passes, there's a legal proceeding to confirm that this will is really the deceased person's last will. Because sadly in the nature of these things, that person isn't around anymore to confirm that. If there wasn't a probate process, anyone could just walk into a financial institution claiming to be the executor, saying to the clerk. I'm John's executor, just turn over his stuff to me.

And there'd really be no way that the financial institution could tell if he's truthful or if he's lying. So in terms of the overall legal policy, probate is actually intended to protect the family and to protect the assets. And different states in the United States have different procedures. In some states like New Jersey, an uncontested probate proceeding can be pretty simple. You submit the basic information along with relatively straightforward legal papers to the court where the named executor agrees to fulfill his or her responsibilities. In certain counties, the family never even has to go to the courthouse.

The court issues the certificates, often called letters testamentary, confirming that this individual is now really the executor. The certificates are important in that they broadcast to third parties that this individual is in fact authorized by the court to gather the deceased person's assets and wind up his or her financial affairs. Unless there's a problem, in most cases, the family will never have to go back to the court to request additional permission. In other states like Florida, there can be a lot more ritual and the courts are much more involved. For example, in some situations, the executor or administrator may have to account to the court in a formal way, even if the family members agree to waive such a proceeding. Or in some cases, the executor may have to ask permission to sell certain assets such as real estate.

Gary Wingens:

Winston Churchill said, "I am prepared to meet my maker, whether my maker is prepared for the great ordeal of meeting me is another matter."

Warren Racusin:

So once you've completed the rituals of probate, Mike, what comes next?

Michael Vito:

Well, then you get to the ritual of gathering the assets, and that means identifying all of the bank accounts, securities accounts, real estate, business interests, private investments, what have you. Basically whatever the individual owned prior to passing. Beneficiary designations for certain assets,

such as individual retirement accounts, 401ks and life insurance will also have to be reviewed to determine the recipients. You must also find out whether the person owed money to anyone such as mortgages, bank loans, credit cards, et cetera. And it's the executor or administrators duty to satisfy those obligations. Typically the process in retitling the assets is straightforward. You're moving the asset from the name of Jane Doe, for example, to the estate of Jane Doe. The executor will still need to obtain values for all the assets for two important reasons. One is to make sure that the executor knows exactly what there is so he or she can fulfill fiduciary responsibilities to the beneficiaries. But also to establish a new income tax basis and determine whether any death taxes are due.

Warren Racusin: So then you have to start thinking about taxes, right? And we're going to talk a lot more about estate and inheritance taxes in another podcast. But for now, can you just take the folks through the overview of what the administration and the tax deadlines are?

Michael Vito: Sure. For 2021, the estate tax exemption is rather large. For federal purposes, the estate tax exemption covers \$11,700,000 in assets. If you have less than that, there wouldn't be any estate tax due, unless you've made large gifts during your lifetime.

Warren Racusin: And in fact, Mike, you don't even have to file an estate tax return if your estate is under 11.7 million dollars, not including those gifts, right?

Michael Vito: That's right Warren. You may choose to though to qualify for certain benefits. There is an exemption that can be moved to the surviving spouse and you may want to file just to claim that exemption. But each year this number changes a little bit, since it's indexed for inflation. So the numbers I gave you are for 2021, but they'll go up a little bit year by year, depending on that index. But this is an important part of the administration, because it sets the overall timeline. Payment for federal estate taxes is due nine months after date of death.

You may be able to extend the return, there's an extension for six months, but the payments due at the nine month mark. And if you don't pay them on time, there can be serious interest and penalties that are due. So don't fool around with the IRS. That is a very hard deadline. Now, depending on what jurisdiction the person lived in or owned property in, there may also be local death taxes to worry about. Each jurisdiction has its own set of statutes and should be looked at independently. So let's assume that the IRS and the states gave you the all clear, there's no issues or questions or problems with the returns.

Warren Racusin: So at that point, we're ready to complete this ritual of winding up the estate.

Michael Vito: Yes, at that point you can move ahead with the wind up process. If the family is comfortable proceeding informally and by informally I mean without a court audited fiduciary accounting or other court proceedings, the executor generally will provide the beneficiaries with the financial history of the estate so they can see what happens, what assets were in the estate at the time the decedent's death, what investment results occurred during that time period,

what distributions were made. The executor usually will also ask the beneficiaries to prove the administration of the estate and release the executor. Now remember that the executor is a fiduciary and that imposes the highest duty of care known in the law.

The executor is fully responsible for shepherding the assets of the estate administration faithfully and to the best of his or her abilities. If the beneficiary does not wish to release the executor, the executor has the right to seek a formal court discharge. And that's usually why the release is contained inside that agreement. It's in lieu of getting a court discharge. Now once the beneficiaries approve the accounting materials, which can be bank statements or whatever is acceptable to them, the executor will then go ahead and distribute the remaining assets of the estate to its beneficiaries, as called for in the governing documents. And then the administration of the estate at that point is complete.

Warren Racusin: That's when our decedent laughing heirs start laughing because all they have to do is sign off on the release and the receipt and they get a check for however much money they're entitled to. And that is the end of the legal process. And that's the timeline and that's the journey of an estate through administration. But that doesn't mean that the journey of the family is complete, right? There are other rituals that guide them and hopefully assist them through these times. And one of our jobs as trust in the state's lawyers is to understand those rituals. This is an emotional time for the survivors.

And we have to understand not only the administration of the estate from a legal point of view, but also the emotions the family is living through. Mike, that's all great information and really helps us understand what happens when somebody dies, having planned their estate properly with a will or revocable trust, et cetera. But let's go back to our friend, the man who died with lots of relatives and no estate planning at all. What happens to that estate? How does that get wound up and how does the money get where it's supposed to go?

Michael Vito: That's a good question, Warren. Unfortunately, that gets to be a bit more complicated and expensive. At that point, each state will have its own rules that govern this known as intestacy, where you don't have a will. And someone from the family would need to step up and qualify as what we call the administrator. That's someone serving where there is no executor. And at that point, once you have someone who's willing to do it, they will need to engage a professional to track down all of the relatives. In this case, there were a number of them. So you do need to trace down the family lines. And if they're in a different country, for example in this case, we had a number of different countries represented, it gets even more challenging because then you ran into other tax issues as well. But the administrator has the power to do it, it's just a bit more complicated. And then the administrator needs to check back in with the court at certain points in time, which adds delay and expense to the process.

Warren Racusin: So the lesson to be learned is yes, while it may take some time and cost some money in fees, et cetera, to do your wills, in the long run, it's going to cost your family a lot less if you do it the right way and get the planning done

and the wills and revocable trust signed rather than having it left up to this non-process that may happen if you haven't done things the right way, right?

Michael Vito: That's exactly right. And some of the costs, some of the will typically waves a bond and other things that are costs that are imposed on the estate. So you bypass all that with a properly drafted document. So the moral of the story is, if you can get your affairs in order properly during your lifetime, it makes it a lot easier on your family later on.

Doreen Edelman: Yogi bear said, "Always go to other people's funerals. Otherwise they won't come to yours."

Warren Racusin: Michael, can you talk about the rituals that religion brings to a family and how they can help or hurt the family in these difficult times?

Rabbi Michael Jay: Sure Warren, and thank you for having me with you and Mike today. The religious ritual, I'm a rabbi, so I'm talking from a Jewish perspective here, but it crosses over faith lines I think. And what we are doing is we, or what we attempt to do is take a family from the life of the person and transfer that life of the person into a ritual where that person is now passed. And then the memory of that person becomes the life of that person, the good memory. And we try to structure it so that the family can go from that person being alive with them, to that person being a memory that is alive with them. And there is a practical way in order to get there. And that starts right after the person passes away. In the Jewish tradition, a person passes away, there are things that need to be taken care of with regard to the body.

In this tradition, we are born body and soul and the body is a holy vessel that houses the soul. And now the body has served its purpose, but we need to pay respect to that body. So as soon as someone passes away, we need to have that body taken care of from the moment of death until the time of burial in a very specific way and cared for and loved and nurtured. And that's the first thing we want to make sure happens. We meet with the family, with the survivors of the one who passed, to try to figure out from them, who was this person? What was this person's life to them? And how are we going to make this person's memory a blessing? I'll tell you that the job of the rabbi or the priest, it probably should begin long before a person passes, but it doesn't always happen.

Sometimes we're just thrown into it. Someone passes away and we get the call. Sometimes those calls, by the way, can be interesting. I got a phone call from a congregant once, he called me right after his mom had died, he called me from the ICU. And he called me, he said, rabbi, I have to tell you the truth, my mother would much rather have made this call, but she can't because she just passed away. What do I do? And I said, well thank you for calling. May her memory be for a blessing. And this is what we need to do. First off, you need to reach out to a funeral home and find out where you can have a funeral service. If you don't already have a plot, you need to ask for help in finding a plot. Hopefully they would've had a plot set out and purchased ahead of time, but you'd be surprised how often that does not happen.

So that's practical what to do when someone passes. But then I need to meet with the family and we need to arrange a time to get together. Either, by the way, sometimes it's on phone, nowadays it's on Zoom a lot, but we want to get as much of the family together so that I can get a history of the person who passed away and we can get to find the relationships in the family. And then we'll find out who wants to speak at the funeral and who doesn't want to speak at the funeral. And then we get the issues because there are always issues within families. Some are more intense than others, but we need to figure out okay, who cannot speak with whom, who should be there. I once had a conversation with the family where a brother and sister would not get on the phone together.

And they asked me to, could you please tell my sister this, could you please tell my brother this? And ultimately I had to say, look, guys, you need to work on this issue because I can't be the go between between you and I don't think that your mom or dad would've wanted to be the go between.

Warren Racusin: So they wanted you to mediate their problems.

Rabbi Michael Jay: At a time when everybody's emotion, Warren, is hot and the best thing to do at a time like that is to try to have the conversation and tell them, look, one person needs to be the person I deal with. And then frankly, if you want to meet with me when all this is done so we can talk about these issues, great, but we need to get ourselves to funeral. And part of this, by the way, it can't be a long drawn out process because according to the Jewish tradition, the body needs to be buried as quickly as possible. In Orthodox tradition that's within 24 hours usually. In conservative or reform, it can be extended out until people can get there.

Warren Racusin: I often, and I've said this on a earlier podcast, that your will is the last thing that you say about the people and the things that are important to you in your lifetime. And I guess what happens is the funeral is the time that all of the stuff that may have been simmering under the surface or not so much simmering under the surface comes bubbling up that has to be dealt with in some shape, manner or form.

Rabbi Michael Jay: Yeah. It becomes that volcano sometimes that opens up. But I'll tell you something that I try to get my congregants to do now all the time, and I've had a few sessions on this. I have people write their ethical wills ahead of time. Not just-

Warren Racusin: I'm sorry, what is an ethical will Michael?

Rabbi Michael Jay: So an ethical will, Warren, is where the person thinks about, well what did I want to accomplish in my life? What did I want my legacy to be? What lessons did I want to teach? And I ask my congregants, you know what, you have kids, you have grandkids, some have great grandchildren. By the way, I have a congregant who has 36 great grandchildren. That's got to be a record. But at any rate, you have a message that you want them to know? It doesn't necessarily, by the way, have to be a religious message. It could be anything. Get it down in writing now. Write that letter to them. According to the Jewish tradition, the Torah or specifically the book of Deuteronomy, was Moses'

ethical will to the Jewish people. This is what I wanted you to understand and this is what I want you to understand going forward. And if you can get to a family beforehand and have this done, a lot of answers to these questions that can bubble up at death can actually be taken care of and some questions answered.

Warren Racusin: Here are the values that I want that are important to me that I want to share with you, hopefully that you carry on.

Rabbi Michael Jay: Exactly. And it's interesting how many people have never thought of doing it. Once you get someone to do it, and by the way, there's a lot of pushback on it. People really don't want to think about this necessarily because to do it, it's acknowledging that someday I may not be here. And so it's hard. So you get pushback. But the people who I get to do it are thankful and their families are thankful because it creates a lasting legacy going forward. When I look at someone in front of me, I see that there's the rational, there's the emotional, there's the physical and there's the spiritual. And if a person can sit down and take care of all of these before that person's life ends, it makes the ending of the life that much more fulfilling for that person and for everybody else involved with that person.

Warren Racusin: Did the brother and sister who weren't talking, did they end up talking?

Rabbi Michael Jay: Thank you for asking that. In fact, afterwards, we did meet a couple of times. I'm not really a counselor, but you know, rabbi meets with people. And look, are they best of friends? No, but they recognized that they're sister and brother and that there were bonds that they needed to keep together. And so, yeah, so it worked out a little bit.

Warren Racusin: I'm glad you said that because that is what in our view is the most important thing. Yes, there's a lot of technical detail. There's a lot of legal stuff. There's a lot of tax stuff that goes into this. But at the end of the day, what we tell our clients is that the most important thing is that these people, you're a family and the most important thing is for the family to stay together. If we collectively can accomplish that, us on the legal side and folks like you on the spiritual side, then we've done a really good thing for these people.

Rabbi Michael Jay: No doubt, no doubt. And you know, it helps the family. It helps the individual and that's what's important because the more people we can get to take this close look and to work it through, the better off the society as a whole is. So, very nice.

Warren Racusin: Well thank you. Well hope hopefully we've cleared up at least some of the murkiness and mystery surrounding this most difficult and emotional of people's experience. Thanks so much to Michael and to Mike for their insights and thanks to our Director of Marketing, Kevin Iredell and all the other folks at Lowenstein Sandler, the indefatigable Linda Aschettino, Rosa Colon, and Melanie Canto and all the other folks here at Lowenstein who make this possible. Thanks to all of you for listening in. We'll see you next time. And until then, as we say in these parts, have a good one.

Kevin Iredell:

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