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THE ESTATE PLAN THAT MAY BE CONTESTED
By Randy Spiro

Undue influence, lack of capacity and forgery are three examples of grounds for attacking the provisions of a Will or a Trust. Where a spouse or children have been cut out or given a reduced share, the possibility that they will contest the estate plan is increased.

An estate planning attorney should be sensitive to the possibility of a contest and should take appropriate precautions. Sometimes the person who is to receive the larger share either contacts the attorney on behalf of the client or brings the client to the attorney's office. Either of these actions would make the estate plan more suspect. Since it is the attorney's responsibility to strengthen rather than weaken the plan, he or she may tell the beneficiary not to participate in the estate planning process, not to call the attorney, and/or not to bring the client to the attorney's office.

In addition, the estate planning attorney may suggest to the client to bring one or more disinterested witnesses to the attorney's office. These people could later testify that the beneficiary whose share was enlarged was not involved, that the client understood and desired the change, and that the client's mental condition was good.

The attorney may also suggest that a medical doctor perform a mental evaluation on the client around the time of the trust's signing to document the client's cognitive abilities. The doctor's report would provide important evidence should the estate planning documents later be attacked.

Persons attacking an estate plan often claim that the testator (person making the plan) had no reason to decrease the gift to the contestant. To counter this, the attorney may ask the client to put in writing the client's reasons why a particular beneficiary is being cut out or having his or her gift reduced.