

AHERN ADVISORY

Probate Nightmare

Ahern has had the fortune to sell, in excess, of 300 trucking and logistics companies. As part of the process, I always caution Sellers to;

- Make sure that they have an estate plan in effect.
- Make sure that they have competent advisors to take care of their assets going forward, and;
- To continually update their estate plan, to ensure that their assets are protected and can transfer to their heirs.

Recently, there was an article in the Arizona Republic, (Sunday Edition), September 26th 2010, that caused my stomach to “turn”.

- You can access this on the internet and review the exposures that your heirs can potentially have.

When people are too old or sick to care for themselves, the legal system is supposed to protect their assets and well being. In some instances, court appointed professionals entrusted with **these individuals care “drain” away assets through a spiral of fees that relatives are powerless to stop.**

In essence, life savings and freedom are taken away from these individuals.

In this particular article, it outlines 4 very specific cases and it states that:

“Outside of being in prison, no action in the American Justice System deprives a person of so many rights as being declared incapacitated in Probate Court”.

- First, the judge rules that you can’t care for yourself.
- Then, strangers can be given control of every aspect of your life.

All that you’ve worked for and loved your savings, property and ability to contact your families---can be taken away and given to professionals to manage, at enormous expenses to you. This is what really upset me!

- Probate Court is meant to be a “safe harbor” for people in crisis, due to advanced age or illness. A place where a judge helps protect their assets and well being, but;
- Arizona Republic wrote that sometimes, Probate Court allows the assets of vulnerable adults to become a “cash” machine for attorneys and fiduciary companies, which manage their affairs.

In essence, the article stated that fees can drain the savings of even wealthy individuals in less than a year. The headline stated; ***“ADULTS IN CRISIS SEE THEIR ASSETS DRAINED”***.

I would suggest that, as you’re revising your estate plan, I would review the various articles written. **You can review them online at;** www.probate.azcentral.com.

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THE AHERN ADVISORY

in this issue

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Among the investigation findings, there were 5 issues that contributed to the overall issues.

- **Issue 1 – disputes** trigger problems. Fights among family members lead to protracted, cost and legal battles. Judges often fail to step in, early, to stop the feuding and contain cost.
- **Issue 2 – fees mount quickly.** Bills for attorneys, fiduciaries, and others can escalate at a staggering pace. Family members contend that professional fiduciaries bill people’s assets aggressively.
- **Issue 3 – cozy relationships** raise questions. Close ties among judges, attorneys and fiduciaries, can result in a conflict of interest. These relationships can endanger the courts ability to hold attorneys and fiduciaries accountable for their billings and other practices.
- **Issue 4 – objectors take the blame.** Relatives or lawyers that try to fight fiduciary bills may, instead, find themselves blamed for causing delays and held responsible for extra cost.
- **Issue 5 – oversight is lax.** Judges, who have ultimate responsibility for a vulnerable adults assets, are allowed to scrutinize and reject fees, **but substantial denials are rare.**

The article went on to state that the State Board that licenses fiduciaries does little to question their conduct. It further stated that judges, who have the ultimate responsibility for vulnerable adult care and assets, are allowed to scrutinize and reject fees, but, in many instances, they don’t;

- Judges are pointed by the Governor.
- Commissioners are lawyers hired to act as full time judges and are appointed by the courts presiding judge.

One of the most common complaints, from family members in probate cases, is about control over attorneys and fiduciary fees. This week, The Arizona Republic is going to publish an article in which;

- **There are “safe guards”** that can reduce the risk of families ending up in Probate Court, and;
- **They’re going to explain how to protect your assets** and reduce the chances of an expensive court fight.

I would suggest that all readers access the articles, and contact your attorney or Estate Planner (immediately) to make any and all necessary changes to protect your assets.

It’s hard to believe that:

- The people referenced in these examples lost their life savings.
- Somebody that’s incapacitated can be taken advantage of.
- The court systems would allow this to happen, but the cases that were “cited” are real;

They occurred, in many cases, the people are now a ward of the state. Do your heirs a favor and **protect your assets!**

QUOTE OF THE WEEK: “If something goes wrong it is more important to talk about who is going to fix it rather than who is to blame” (Francis J. Gable)