Delusional Drafters
and the Consequences for
Tyrannized Trustees:

Drafting Mistakes Trustees Commonly See

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Scenario 1- The Plan

- Hunter and Wanda are in their 40s.
- 4 young children, Adam, Briana, Colin, & Destiny.
- Cabin in Colorado, they want to avoid probate, they have privacy concerns.
- For generations, their families have done business with Little Bank.
- Create a Revocable Living Trust.
- Hunter and Wanda serve as initial co-trustees, then either may serve at the death or incapacity of first to die/lose capacity.
- At the death of the survivor, Little Bank is appointed trustee to administer the termination of the trust and distribution to 4 children.

Delusional Drafter or Perceptive Planner??

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Scenario 1- What Happened

- Hunter died 10 years ago.
- Wanda just passed away.
- Giant Bank has bought out Little Bank.
- The assets in the RLT consist of a home worth $250k and $30k in checking and savings at Giant Bank.
- When Hunter died, Wanda rolled his IRA into hers, then she named her 4 children as primary beneficiaries.
- Giant Bank politely declined to serve as Trustee.
- A judicial modification is needed to name a new trustee.

Delusional Drafter!!

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Drafting Solutions

- A judicial modification caused by failure to name sufficient trustees is costly and unnecessary.
- When drafting the Trustee provisions, first name the obvious choice for each type of trust that may be created by your trust document, then envision remote possibilities and name alternate trustees accordingly.
- Trustee Appointer.
- Include a corporate trustee.
- Allow a named trustee to appoint successor.
- Name the children even though they are currently minors.

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More Trustee Naming Advice

- If naming co-fiduciaries, include a method for resolving an impasse.
- Don't name a sibling to serve as trustee for a sibling.
- Don't name the child of the first marriage to serve as trustee for step-parent.
- Don't allow a beneficiary to remove a corporate trustee and replace with an individual trustee.

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