

A BRIEF DISCUSSION OF FAMILY SETTLEMENT AGREEMENTS

What is a Family Settlement Agreement

A Family Settlement Agreement is the term used for an agreement reached by all of the heirs as to how an estate should be distributed. There are few disputes it cannot settle and we now use these often.

The Positives

A family settlement agreement can reduce legal expenses and time in probate court involving multiple attorneys representing multiple family members. The Court does not have to approve or disapprove it. All the parties sign it, it is filed with the Court, and it acts both as a binding and enforceable contract, and, if properly drafted, an excellent protection against future liability and claims brought by heirs who may have poorly managed their inheritance. Family settlement agreements are often used to quickly wrap up cases that gave every indication of becoming nasty, protracted battles involving unequal distributions to heirs. Our experience has been that there is a much higher possibility that heirs, and everyone else involved, will come away feeling that they were all treated equally and fairly when a family settlement agreement is used.

The Negatives

All planning tools, no matter how good they are, do have negatives. What are the negatives to a family settlement agreement? First, they require the agreement of every heir. If there is one heir who, for example, is living in his grandmother's house, and not willing to do anything which would enable a sale of the home, the other heirs cannot come together without him and sign a family settlement agreement. Instead, the estate could end up with a dependent administration, where the judge will be the final decision maker on the disposition of family assets. So, cooperation of all the parties is key.

What if there are Conflicts

If there is conflict, likely there will be a need for a bond, formal appraisals on real property and non-marketable assets, plus court accountings - all for want of the signature of one difficult heir due a share of the estate. A second negative, is that if an heir gives up something that they are clearly entitled to in a family settlement agreement, without timely and proper drafting of the family settlement agreement, this giving up something an heir is clearly entitled to may be seen as a gift by the IRS for tax purposes. However, if one is probating or administering a taxable estate where the decedent did not invest in any tax planning, the executor or administrator will want to explore all their settlement options and consider potential issues such as gift taxes.

The Considerations

If considering a family settlement agreement, one should have an attorney, develop a good idea of how the settlement would come out, and what the costs might be in the alternative if dealing with a probate conflict that might arise without a family settlement agreement. This can not only save family members time and money, but sometimes a family settlement agreement often helps siblings and other family members maintain good future relationships with the other heirs. Regardless, one should have their own attorney review a proposed family settlement agreement before signing.

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