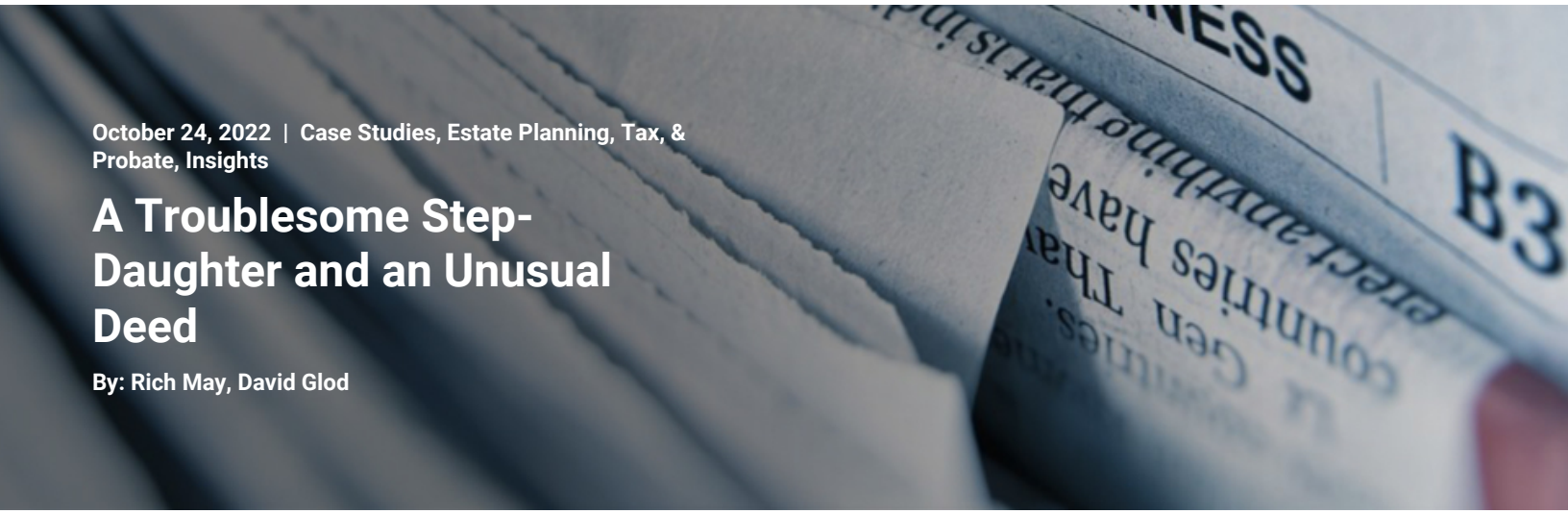


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A Troublesome Step-Daughter and an Unusual Deed

By: Rich May, David Glod

Recently, a client came to the firm with a difficult problem. Her late husband had left her a life estate in the family home, meaning that she owned it for the rest of her life. After that, the deed provided that the home would pass to her children and step-children.

The client had no interest in living in the home after her husband's passing, and needed cash to pay various family expenses. The children and step-children all agreed that she could sell the home and divide the proceeds among the client and the heirs. However after the client had accepted a buyer's offer to purchase, her step-daughter changed her mind and refused to let the client sign the deed. With the planned closing date less than ten days away, the client came to us for help.

When we reviewed the title to the home, my colleague Danielle Justo noticed a somewhat unusual provision. The client and her late husband had reserved for themselves not only a life estate in the property, but also a "special power of appointment." This meant that during their lives, either of them could modify the interest that would pass to the children and step-children by specifying a different interest, and/or a different heir. This is sometimes done for flexibility in estate planning and to potentially protect a property against certain kinds of liens.

In this situation, the special power of appointment meant that theoretically, the client could amend her estate plan to provide that her step-daughter receive no interest in the home upon the client's death. She could show the prospective buyer that she had made that designation and represent that she would not undo it before her death. Then the buyer would purchase the client's life estate, plus the remainder interests of the two cooperating daughters, and would be assured that the uncooperative step-daughter would not have a claim to the property.

I wrote a letter to the step-daughter's attorney, pointing out this feature of the deed and explaining that the step-daughter had two choices. She could cooperate in the sale and receive her fair share of the property. Or she could be disinherited from any future interest in the home, and we would attempt to close the sale anyway. I also made clear that if the



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buyer could not get comfortable with the transaction, we would seek damages from the step-daughter for interfering with the sale.

Two days later, the step-daughter decided to cooperate in the sale, and the transaction soon closed without any further issues. My colleague's estate planning expertise gave me the ammunition I needed to quickly resolve the dispute without resorting to litigation.

If you have questions regarding your estate plan, transfers of real estate among family members, or disputes involving real estate, reach out to me or Danielle Justo and we'll see if we can help.

Disclaimer: This summary is provided for educational and information purposes only and is not legal advice. Any specific questions about these topics should be directed to Attorneys David Glod or Danielle Justo.

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