Legal Chat - No, Thank You

By Greg T. RinckeyQ. Am I allowed to refuse to accept something that a relative left me in his will?

A.

Tax and creditor concerns are common reasons why beneficiaries would want to renounce or refuse interest in property bequeathed to them. Under New York's Estates, Powers, and Trusts Law, renunciations may also be made by the guardian of the property of an infant, the committee of an incompetent, the conservator of a conservatee, an "Article 81" guardian, the personal representative of a decedent and an attorney-in-fact. Beneficiaries are allowed to pick and choose the distributions they wish to accept and the others they wish to renounce. They can even accept half of a distribution and renounce the other half.

Generally, beneficiaries have nine months after the effective date of the disposition to provide a written notice of the renunciation to the surrogate's court that either has jurisdiction over the will or that issued the letters of administration. Accompanying the renunciation notice should be an affidavit from the renouncing party stating that he or she "has not received and is not to receive any consideration in money or money's worth for such renunciation from a person or persons whose interest is to be accelerated, unless payment of such consideration has been authorized by the court."

Renunciation, according to the law, "has the same effect with respect to the renounced interest as though the renouncing person had predeceased the creator or the decedent." Consequently, there is an acceleration of property interests, meaning the person who was next in line to receive a distribution takes the place of the intended beneficiary as though he or she died.

Sometimes parents will seek the renunciation of an infant's property interest from a bequest to avoid adverse tax impacts. But as the Nassau County Surrogate's Court noted in Estate of William De Domenico, 100 Misc. 2d 446 (1979), "where an infant is involved there must be a showing that the renunciation would be directly advantageous to him and not merely to the parent." This case involved a surviving spouse and mother and guardian who petitioned to renounce her children's interest in a trust created by their deceased father. The mother claimed the renunciation would allow her to claim a full marital deduction and save $40,000 in estate taxes. Further, the mother pledged to use the renounced funds for the benefit of the children. However, the court viewed this proposal as ineffective for tax purposes because the renunciation would not pass muster as a disclaimer for tax purposes.

Beneficiaries interested in reducing the tax implications of certain bequests should consult with an estate planning attorney.