



FULFILLING OUR PROMISES
TO THE MEN AND WOMEN WHO SERVED

NONPROFIT ADVISOR

For DAV Departments and Chapters

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AMBIGUITIES IN WILLS AND OTHER ESTATE DOCUMENTS

Readers of this publication may be surprised to know that every year DAV turns over all or part of certain bequest payments to DAV departments and chapters. This is because upon examination of the governing document – the will or the trust – our staff has discovered that the decedent either intended – or may have intended – that a DAV subordinate unit receive the estate gift. In some years, the surrendered funds have exceeded more than one million dollars.

DAV's surrender or division of such gifts emerges from a sense of fundamental fairness, but also from any organization's obligation to its donors – living or dead – to carry out their wishes. Where those wishes cannot be clearly discerned, it is sometimes most prudent to divide the testamentary gift.

In a sense, there are well over a thousand "DAV" organizations – national, departments and chapters. That makes it imperative that gift recipients be named with precision. It also makes it more likely that ambiguous cases will arise.

UNAMBIGUOUS CASES

The easy cases are those in which the DAV donee is named with clarity and precision. "DAV, PO Box

14301, Cincinnati, OH 45250" could not be clearer. That description identifies the national organization. So too, "DAV, Chapter 16, Iowa (with or without an address)" is equally clear. A bequest to "DAV Department of Iowa," (with or without an address)? Same thing, full gift headed to the department.

A case that arises fairly often is a bequest to "Disabled American Veterans," with no further specification and no address. Courts have been ruling on these cases for decades and the legal principle that has emerged is beyond dispute: where a parent organization has one or more local affiliates, a bequest directed to the general name of the organization (*such as to "DAV"*) belongs to the parent. The rationale for this rule is common-sense wisdom: if the testator had wanted to make a gift to a local affiliate, he would certainly have known how to name that affiliate.

AMBIGUOUS CASES: IMPRECISE LANGUAGE

The cases that give rise to trouble often involve poor drafting of the testamentary instrument. For example, suppose the gift is earmarked for "DAV of Iowa (with no address)." Does that mean the Department of Iowa? Or is it the national



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organization, to be used in Iowa? Such an ambiguous instruction might well lead to a division of the proceeds. On the other hand, if the bequest was directed to “DAV of Iowa, located at 210 Walnut St., Rm. 566, Des Moines, IA 50309,” that would send the gift to the national organization, since the address is the location of the National Service Office. Similarly, if the address was that of the Department of Iowa, that entity would receive the whole thing.

AMBIGUOUS CASES: SLOPPY EXECUTORS

Popular wisdom says that most executors are carrying out that role for the first and only time in their lives. Sometimes, they get careless. On the other hand, lawyers do it all the time and they get careless too! A common mistake is to direct notice of a bequest to “Disabled American Veterans” to the local DAV entity because the will contains no address and the local affiliate pops up first in the phone book or its electronic equivalent. Naturally, that creates an expectation in the local DAV, but it does not change the fact that *under the law*, that bequest belongs to the national organization. Hard as it may be, the local DAV has an obligation to notify the executor, the national organization and

the court that it is not the intended beneficiary. Such an obligation is as real (and as painful) as the obligation to return the \$50,000 that the ATM spits out when an individual tries to withdraw \$50 from an account that only contains \$65.13! Just because you get an erroneous notice that you’ve won the sweepstakes doesn’t mean that you have won the sweepstakes.

IMPOSSIBLE CASES: EXTRINSIC EVIDENCE

In some cases, it may be impossible to determine precisely WHAT organization a decedent intended to benefit. For example, suppose the bequest was to “Disabled and Injured American Veterans in Iowa.” Suppose further that there is no organization of that name. Who gets the money? DAV National? Department of Iowa? Some third similar-named organization? In those cases, the court will often look for evidence outside the will itself (“extrinsic evidence”) to determine true intent. This may involve testimony from the drafter of the will, examination of the relationship between the testator and organizations he may have intended to benefit, as well as interviews of persons who knew the testator well.

Nonprofit Advisor is prepared by the Office of the DAV’s General Counsel and is published quarterly for the informational use of DAV Departments and Chapters. This newsletter is not intended to replace legal advice that may be required to address individual situations.