

WHEN THE COURT WILL "NULLIFY" A RELEASE

All attorneys and legal assistants know that in order to close a trust or estate the beneficiaries need to sign a release or settlement agreement. But, what is the basis for that release or settlement agreement? Will an informal accounting be sufficient? Will a summary informal accounting be sufficient? Will no accounting be sufficient?

A recent case in the Surrogate's Court of Nassau County (*In the Matter of the Petition to Compel an Accounting by Donald R. Leogrande and Joseph Leogrande, Jr., as Trustees of the Trust by Agreement dated January 22, 1986, made by Joseph W. Leogrande, Sr. for the benefit of Joseph Leogrande, Sr., and others, Deceased*), 821 NYS 2d 862, Judge Riordan in a well reasoned and detailed opinion sets forth the current state of New York Law. We have prepared a **TEdec case note** - the **Leogrande Case** for you and have included that as an extra page in this issue of the TEdec Times.

From the **Leogrande Case**, the bottom line is:

❶ A settlement agreement or release, especially when all parties are represented by counsel, is a favored way to settle an estate or trust. Nevertheless, since a stipulation of settlement is a contract between the parties, **the Court may**, in its discretion, **relieve a party from the stipulation** upon a showing of those grounds necessary to avoid a contract such as fraud, collusion, mistake or accident.

❷ An **agreement** to discharge a fiduciary and settle an account would be **binding provided**: A) all interested parties, who would be necessary parties in a judicial proceeding settling the account, sign the agreement; B) the fiduciary has made full disclosure of all proceedings in an accounting circulated to all signatories to the agreement; and C) all signatories to the agreement are competent adults.

❸ Failure to make **full disclosure** will nullify a release.

⇨ **Comment:** What is full disclosure? You will never know until it is too late. This is why TEdec prepares an accounting based upon the National Fiduciary Accounting Standards and the New York State Court Requirements – for your and your client's protection.

❹ The **accounting party** cannot rely solely upon the release, and he (she) **bears the burden** of establishing that the beneficiary was dealt with fairly in obtaining the release. This would typically be done by submitting the (informal) accounting upon which the release was based – making a complete and full disclosure therein.

TEdec recommends that you always close an estate, trust or guardianship with a complete and full accounting. If a formal accounting is not required, use the TEdec accounting format for an **informal accounting** – simply put the balance sheet on top of the Accounting of the Receipts and Disbursements and insert the Schedule of Assets on Hand at the appropriate position. This accounting will make a full disclosure and with it you can show that the party who signed the release was fairly treated (i.e. you made a full and complete disclosure to the person who signed the release).