January 27, 2010

T&E Litigation Update: *Ingeno v. Meister*

In *Ingeno v. Meister*, Case No. 09-P-502, 2010 Mass. App. Unpub. LEXIS 58 (Jan. 19, 2010), the Appeals Court affirmed the probate court's construction of a devise of real property. In her will, the testatrix devised her real property in Rockland as follows:

"I hereby bequeath the property...to my husband, Albert L. Ingeno, now of Rockland, Plymouth County, Massachusetts, Robert A. Ingeno, now of Rockland, Plymouth County, Massachusetts, Richard Meister, now of Abington, Plymouth County, Massachusetts and Alan Meister, now of California, equally share and share alike. I request that the Court allow my husband to remain on the property during his lifetime so long as he pays the taxes and expenses related to the property. At the time of his death the property is to be divided equally amongst, Robert A. Ingeno, now of Rockland, Plymouth County, Massachusetts, Richard Meister, now of Abington, Plymouth County, Massachusetts and Alan Meister, now of California, equally share and share alike."

The Court held that this devise created an absolute gift to Albert, Alan, Richard and Robert, with each receiving a twenty-five interest in the property, rather than a life estate in Albert and a remainder in equal thirds to Alan, Richard and Robert. In reaching this holding, the Court relied on the rule of construction that "where the absolute and unrestricted ownership of property is given by will, a limitation over is void, because such a limitation is inconsistent with the full and complete title already given." Davis v. Davis, 225 Mass. 311, 312 (1916).

Accordingly, as the Court explained, the first sentence of the devise at issue created an undivided interest in the four named devisees, in fee simple absolute, with no conditions. Therefore, the next two sentences purportedly creating a life estate with remainder interests are ineffective.