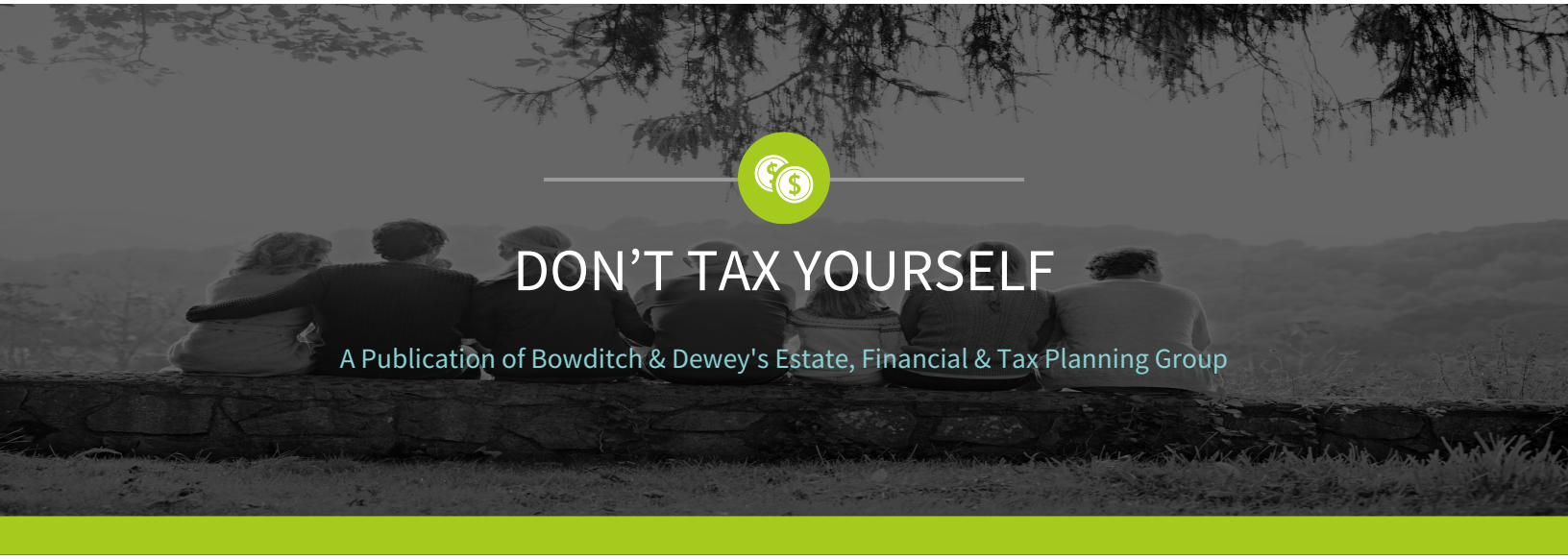

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Tales from the Docket: Who Gets the Money When a Trust Fails?

BY BOWDITCH & DEWEY • NOVEMBER 1, 2023

In 1998, Elizabeth died leaving a will that contained a trust for the benefit of her niece, Jean, for her life. Upon Jean's death, the remaining trust assets were to pass to her other niece, Dorothy. Both Jean and Dorothy remained single without children for their lives.

In 2017, both Jean and Dorothy died, leaving no heirs. No other beneficiaries were named in the trust. The trust failed to state who should receive the remaining trust funds. By 2017, all of the family members in Jean's generation and many of the family members in Jean and Dorothy's generation were deceased, some leaving children and others not.

Our client, the trustee, brought this to us and asked for our assistance. We filed a petition with the probate court to bring all of the accounts up to date and to determine the heirs of Elizabeth, as of 2017. After years in the probate court system, the judge determined which of the living family members were heirs, and their percentages under the intestate law. In 2023, the judge authorized the trustee to divide and distribute the remaining trust property to Elizabeth's heirs.

The legal fees, court costs, and loss of time could have been avoided by stating in the trust that in the event of a failure of all the named beneficiaries the takers of last resort would be the grantor's heirs-at-law or charities.

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