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To Will or Not To Will:

East Asian Americans and Their Legal Challenges When Planning for Their Estates Within the United States Probate System

Shannon Chamberlain

ABSTRACT

Asian Americans historically have been underrepresented in the estate planning community, partially due to the decision of Asian Americans to forgo will execution. This Article focuses specifically on the estate planning experiences of East Asian Americans, mainly from South Korea, Japan, and China. This Article begins by examining some of the reasons which motivate East Asian Americans to forgo estate planning, including the cultural sensitivities that may not be accounted for by the current composition of estate planning attorneys, in which East Asian Americans are underrepresented. Next, this Article examines case law to demonstrate that East Asian Americans have had their estate planning documents challenged, mainly through accusations that due execution was not achieved because the documents were written in a different language than spoken by the testator or party to the agreement (if not a will). Subsequently, this Article briefly addresses some of the differences which exist in the probate systems between East Asian countries and the United States to demonstrate that such discrepancies may create confusion and frustration for recent East Asian immigrants looking to create testamentary documents in the United States. This Article then transitions by glimpsing ahead at efforts to remedy both the lack of inclusion and the challenging situations that have been faced by East Asian Americans in the estate planning community, mainly by observing recent efforts to engage and educate East Asian Americans on the importance of estate planning. Finally, this Article provides solutions to reduce the likelihood of will contests for East Asian Americans, as well as solutions for improving the experiences of East Asian Americans in will execution overall, considering the international differences and cultural sensitivities that impact East Asian American testators.

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INTRODUCTION

Historically, Asian Americans have been less likely than white Americans to have wills.¹ However, COVID-19 deaths and the surge in anti-Asian violence during the past five years have driven estate planning attorneys and nonprofit organizations to urge Asian Americans to create wills and other estate planning instruments. This Article begins with a discussion of the pertinent cultural needs seen in Chinese, Japanese, and South Korean families which present obstacles to estate planning when cultural competence is lacking. Part I continues with a discussion of the underrepresentation of East Asian Americans in the legal profession

1. See Sheryl Nance-Nash, *Race and Retirement: Who’s Saving the Most, Least?*, FORBES (Feb. 15, 2012, 9:42 AM), <https://www.forbes.com/sites/sherylnancenash/2012/02/15/what-does-race-have-to-do-with-retirement/?sh=5c9a3d472433> [<https://perma.cc/R5RR-Q2MF>] (“Although Asians are strong savers, they are the least likely to have a last will and testament (26%), compared with 31% for Hispanics and 37% for whites” in the United States); Althea Chang-Cook, *Why People of Color Are Less Likely to Have a Will*, CONSUMER REPS. (Aug. 10, 2022), <https://www.consumerreports.org/money/estate-planning/why-people-of-color-are-less-likely-to-have-a-will-a6742820557> [<https://perma.cc/3KCQ-ELDC>].

and estate planning in particular, which in turn may contribute to disincentivizing East Asian Americans to seek out an estate planning attorney. Part I concludes with documenting both recent and historical judicial estate contests to show the challenges faced by East Asian Americans in having their estate administered uninterrupted in probate over the objection of their family members, which relates to some of the cultural themes addressed in Part I. Part II then briefly surveys legal distinctions between creating estate planning instruments in the United States compared to China, Japan, and South Korea, which can create confusion for East Asian American families who may lack familiarity with such variances.

Part III and Part IV address solutions for East Asian American families to become better equipped with reliable estate planning tools and strategies. Part III begins with solutions for estate planning attorneys to increase engagement with East Asian American clients, including documenting examples of recent efforts to engage and educate East Asian American families on estate planning, while recognizing that the COVID-19 pandemic and related violence prompted these discussions. Part IV then concludes with an examination of possible solutions for preventing will contests for East Asian American families with the purpose of encouraging more dependable estate planning.

This Article recognizes that its analysis is limited to East Asian Americans mainly descending from China, Japan, and South Korea. This Article does not provide a representative overview that fully grasps the extent of estate planning distinctions and cultural variances across Asia. Rather, this Article provides a focused look at East Asian Americans, defined for purposes of this Article as including persons descending from China, Japan, and South Korea. If references are made to Asian Americans more generally, such a choice is based in reliance on research and statistics of other sources which define Asian Americans or East Asian Americans more broadly than this Article.

I. EAST ASIAN AMERICANS AND CULTURAL CHALLENGES TO PLANNING FOR THEIR ESTATES

A. *Cultural Sensitivities That Impact the Manner and Method of Drafting Estate Planning Instruments*

East Asian Americans have unique, rich cultures which at times may present distinct interpretations and thoughts on how to approach topics such as the role of the family or the occurrence of death. Given that East Asian Americans hold such cultural differences from other Americans, an attorney conducting estate planning for an East Asian American should not always approach a client meeting with the demeanor, tone, or choice of phrasing as the attorney would for members of a different racial background who do not maintain the same values. Consequently, East Asian American attorneys have sought to educate the legal community on particular cultural principles that would best guide estate planning representation of East Asian American clients.

In *Touching The Third Rail: Diversity, Culture, and Ethics in Estate Planning*, an article prepared for the 55th Annual Heckerling Institute on Estate Planning,

three estate planning attorneys discuss the cultural differences among minority Americans that could impact their experiences in estate planning.² Akane R. Suzuki, one of the authors, is an East Asian American attorney who also has served as an editor of a Japanese-language book on cross-border estate plans.³ Suzuki, with the other authors of the article, documents the distinct characteristics of estate planning that would impact East Asian Americans' experiences with drafting a will in the United States.⁴

First, the authors discuss the importance of the family as a unit.⁵ In certain East Asian cultures, family remains close throughout one's entire life, as adult children oftentimes remain in the family household to take care of elderly family members.⁶ Thus, estate planning would likely represent a family discussion rather than an individual client discussion.⁷ Indeed, "in a 1995 medical study of subjects who were 65 or older, those who self-identified as Korean American were more likely to conclude that the family, rather than the patient, should make end-of-life decisions."⁸ For example, while 87% of European Americans, when informed of the critical state of a family member's condition, would inform that family member of the seriousness, less than half of Korean American families would do the same.⁹ For Korean Americans, the family members collectively decide what to tell the patient, which in turn tends to focus on eliminating stress and worry for the patient, while European Americans do not feel as bound by that concern.¹⁰ Thus, attorneys with knowledge of this cultural sensitivity on the importance of family in decision-making processes can effectively work with an East Asian American client to provide options allowing family participation in estate planning sessions, including the will drafting process.¹¹

Another custom in East Asian American inheritance culture includes granting greater property dispositions to sons over daughters due to a traditional preference.¹² This preference originated from the tradition of expecting the son to "live

2. Margaret G. Lodise, Stacy E. Singer & Akane R. Suzuki, *Touching the Third Rail: Diversity, Culture, and Ethics in Estate Planning*, 2022 EST. PLAN. COURSE MATERIALS J. 63, 63.

3. *Id.*

4. *Id.*

5. *Id.* at 74; see also Sok K Lee, *East Asian Attitudes Toward Death—A Search for the Ways to Help East Asian Elderly Dying in Contemporary America*, 13 PERMANENTE J. 55, 58–59 (2009); Kenjiro Kawaguchi, Kazushige Ide & Katsunori Konda, *Family Social Support and Stability of Preferences Regarding Place of Death Among Older People: A 3-Year Longitudinal Study from the Japan Gerontological Evaluation Study*, 51 AGE AND AGEING 1, 2, 6 (2022); Hee-Young, Eun Ae, *Cultural Dynamics and Psychological Perspectives: Unraveling the Human Psyche in South Korea*, 5 INT'L J. SCI. & SOC'Y 73, 77–78 (2023).

6. See Lodise et al., *supra* note 2, at 74.

7. See Lodise et al., *supra* note 2, at 74.

8. Lodise et al., *supra* note 2, at 74.

9. Lodise et al., *supra* note 2, at 74.

10. See Lodise et al., *supra* note 2, at 74.

11. See Lodise et al., *supra* note 2, at 74.

12. See Lodise et al., *supra* note 2, at 74; see also Fengqing Zhao, Ying Wang, Yudan Li, Huifang Zhang, Sen Li, Zhongjie Wang & Jie Hou, *Gendered Parenting: Maternal Son Preference and Depressive Symptoms in Chinese Early Adolescents*, 14 BEHAV. SCI. 1, 1 (2024); Yun-chien Chang, Sieh-Chuen Huang & Su-Li Her, *Son Preference: An Empirical Study of Estate*

in the ancestral home and take care of the aging parents and grandparents,” and the family would express gratitude for his assistance through a bequest or gift.¹³ On the other hand, daughters traditionally left their birth family once married to join their husband’s family.¹⁴ These customs have influenced property dispositions, as the authors share an example that “clients who own businesses may direct their business interests only to their sons or they may give their voting shares to the sons and non-voting shares to the other children.”¹⁵ Thus, estate planning attorneys who assist East Asian American clients holding this traditional preference should be mindful of any disparities and appropriately discuss with the client the potential outcomes and consequences that may arise from exercising that preference, particularly the possibility of will contests.

Another cultural sensitivity issue raised by these authors is the discussion of death.¹⁶ In many East Asian cultures, talking about one’s death is considered bad luck; therefore, an estate planning attorney for an East Asian American should be careful about discussing death.¹⁷ For example, in Japan, estate planning attorneys have used the phrase “when the inheritance occurs” with clients, rather than the term “death.”¹⁸ Similarly, death is a taboo topic in Chinese culture, “as it is believed that death will come if it is mentioned.”¹⁹ Indeed, since the number four in Chinese sounds similar to the word for death, Chinese families will avoid license plates and house numbers with the number four in them.²⁰ This cultural belief would likely negatively impact the working relationship between an estate planning attorney without cultural competence and an East Asian American client. An East Asian American would likely be uncomfortable working with an attorney who is blunt about death and talks about it casually (considering that death is part of that attorney’s everyday work).²¹ Consequently, estate planners working with East Asian Americans should be open to considering themes of harmonization and self-transformation as one approaches the end of life, as these themes have been reoccurring components of East Asian religions in promoting peace and comfort at the prospect

Distribution in Wills, 57 CORNELL INT’L L. J. 267, 267, 270 (2024).

13. Lodise et al., *supra* note 2, at 74.

14. See Lodise et al., *supra* note 2, at 74.

15. Lodise et al., *supra* note 2, at 74.

16. See Lodise et al., *supra* note 2, at 75; see also Mei Ching Lee, Katherine A. Hinderer & Carla S. Alexander, *What Matters Most at the End-of-Life for Chinese Americans?*, 4 GERONTOLOGY & GERIATRIC MED. 1, 1–2 (2018); Jenny E. Chung et al., *Top Ten Tips Palliative Care Clinicians Should Know About Caring for Filipino American and Korean American Patients*, 27 J. PALLIATIVE MED. 104, 107 (2024).

17. See Lodise et al., *supra* note 2, at 75.

18. Lodise et al., *supra* note 2, at 75.

19. Madelyn Chung, *The Death of My Poh Poh Made Me Wonder: How Do Chinese Families Deal with Grief?*, FASHION MAG. (Aug. 30, 2019), <https://fashionmagazine.com/flare/tv-movies/grief-chinese-family-the-farewell/> [<https://perma.cc/7VL2-NLP8>].

20. *Id.*

21. See Michael Bailey, *Why Death Is No Laughing Matter, But Estate Planning Is!*, MICHAEL BAILEY L. OFF., <https://michaelbaileylawllc.com/why-death-is-no-laughing-matter-but-estate-planning-is/> [<https://perma.cc/3SNX-LYLY>] (believing that estate planning should include a level of lightheartedness).

of death.²² This self-transformation ought not to be viewed in an individualistic sense, but as a sense of community—that is, self-transformation to improve the state of the world.²³ Personal self-transformation is viewed as a stepping stone to transforming one's family and ultimately society for the greater good.²⁴ Estate planners should consider discussing the plans for one's estate as a means of completing self-transformation through promoting peace in society and cultivating family, which an estate can do by providing for desired beneficiaries (charities, family members, and so on).

Additionally, it is difficult for many East Asian Americans to openly speak about money.²⁵ Talking with one's parents about their personal finances is considered to be rude in many East Asian cultures.²⁶ This cultural sensitivity makes it challenging for younger generations to ensure that their parents have adequately prepared their estates before death.²⁷ Two California-based financial advisors shared a story of one of their clients with a South Korean American father who died without a will or trust in place.²⁸ The father was the head of household with the sole knowledge of his own assets as the family members were hesitant to ask about his finances, which made it difficult for this client to adequately close the estate.²⁹ It took multiple years for this client to close the estate, dealing with assets in both the United States and South Korea, and even then, the client did not properly tax the estate in South Korea, resulting in a hefty tax bill.³⁰

Moreover, one of the most important issues faced by non-English speaking East Asian Americans in the estate planning process is the language barrier between speaking an East Asian language and producing an English will or trust.³¹ When working with a translator or family member, there is a risk that the translations of the testator's words do not truly convey that individual's wishes.³² This would likely invite a will contest for a lack of due execution of the will, since the will would not accurately represent the last will and testament of that testator. Thus, the testator could not truly declare the will to the witnesses as being the desired expression of the disposition of his or her property after death.

Further, there arises an ethical concern in instances where a child who is one of the beneficiaries ends up providing translation services for the testator.³³ This concern is heightened when the attorney is told that the client wishes to

22. See Lee, *supra* note 5, at 60.

23. See Lee, *supra* note 5, at 58.

24. See Lee, *supra* note 5, at 58.

25. See Mary M. Geong & Helen Chu, *East Meets West*, CAL. CPA (June 2019), <https://www.calcpa.org/~media/37dd7e45e5c848c7a2a022567f227ee4.ashx> [<https://perma.cc/2T59-L6XC>].

26. See *id.*

27. See *id.*

28. *Id.*

29. *Id.*

30. *Id.*

31. See Lodise et al., *supra* note 2, at 75.

32. See Lodise et al., *supra* note 2, at 75.

33. See Lodise et al., *supra* note 2, at 76.

disproportionately benefit the translating child.³⁴ If the child is a beneficiary to the will and is being disproportionately benefited by it, the better practice would be to have an uninterested translator assist in the client meeting, or to work with an attorney who is fluent in the language that the client speaks.³⁵ Otherwise, a will contest for undue influence or fraud in the execution could be raised by other family members if it is suspected that the child exerted pressure on the testator unbeknownst to the attorney who was unable to speak the language, or that the child purposefully mistranslated the words of the testator in order to draft a will that benefited him or herself, respectively.³⁶

Overall, East Asian Americans have come from countries where the role of the family is situated differently than in the United States and where cultural norms shape discussion of topics which are a necessary component of estate planning. Moreover, for more recent East Asian immigrants, conforming to an already difficult process for drafting an estate planning instrument is compounded when considering any potential language barriers. Given these unique challenges, the estate planning community has sought to produce instructive materials, including some the articles discussed throughout this subpart, to promote awareness of best practices when working with East Asian American clients. Nonetheless, while educating the estate planning community at large is a necessary step in expanding the availability of sufficient legal services for East Asian Americans, there emerges the issue of East Asian representation in the estate planning legal community, as addressed further in the next subpart.

B. *Lack of a Trusted Attorney: Underrepresentation of Asian American Lawyers and Its Impact on East Asian Americans Seeking out Legal Services for Estate Planning*

Legal scholars have observed that members of a particular race may choose to seek representation from a member of the same race due to the desire to be represented by someone who shares in one's experiences, culture, and history.³⁷ Given the violence and racist rhetoric which has devastated East Asian Americans in the United States, combined with the specialized cultural needs of East Asian Americans as discussed above, East Asian Americans deserve access to attorneys who allow them to feel seen, heard, and understood during the vulnerability which arises when planning for one's estate. However, Asian Americans in the United States are underrepresented in the legal community, as Asian American enrollment in law school has declined more steeply since the Great Recession than for any other group, and the number of Asian American attorneys is projected to stagnate by 2030, despite Asian Americans having been the largest growing population in the United States.³⁸ Indeed, between 2000 and 2019, the Asian American popula-

34. See Lodise et al., *supra* note 2, at 76.

35. See Lodise et al., *supra* note 2, at 76.

36. See ROBERT H. SITKOFF & JESSE DUKEMINIER, WILLS, TRUSTS, AND ESTATES 290, 323 (11th ed. 2022).

37. Julie D. Lawton, *Am I My Client? Revisited: The Role of Race in Intra-Race Legal Representation*, 22 MICH. J. RACE & L. 13, 22 (2016).

38. See *New Study Explores the Changing Diversity of Law Students Since the Great*

tion increased by 81%.³⁹ Further, “Asian Americans are projected to be the nation’s largest immigrant group by the middle of the century.”⁴⁰

Moreover, although Asian Americans consist of about 7.4% of the U.S. population as of 2023, only 4.87% of partners at United States law firms were Asian in 2023.⁴¹ Even so, Asian Americans fare better in representation than other minorities, as only 2.47% of partners were African American and only 3.01% of partners were Latinx.⁴²

Additionally, Asian Americans experience underrepresentation in management level positions, when compared with their percentages of the law firm population overall.⁴³ For example, although Asian Americans “comprised 7.8% of all attorneys in the Vault/MCCA survey data for 2019, they held 4.1% of seats on executive management committees.”⁴⁴ Further, Asian Americans have disproportionately high attrition rates, as do other minority groups.⁴⁵ While Asian Americans constituted 7.8% of all attorneys in the Vault/MCCA 2019 survey, they also represented 10.4% of attorneys who quit working at their firms that year.⁴⁶ As a point of comparison, African American attorneys constituted 3.7% of attorneys but 5.8% of those leaving, and Hispanic/Latinx attorneys made up 4.4% of attorneys but 5.2% of those leaving.⁴⁷ For attorneys of color, attrition rates are most pronounced at the associate level.⁴⁸

These high attrition rates for Asian Americans attorneys negatively impact their ability to serve as estate planning attorneys. At midsize to big law firms, estate planning services are usually included in the practices areas of “private client services” or “individual client services.”⁴⁹ To work in private client services and to

Recession, AM. BAR FOUND. (May 28, 2020), <https://www.americanbarfoundation.org/new-study-explores-the-changing-diversity-of-law-students-since-the-great-recession> [https://perma.cc/BGW7-U4M7]; see also Abby Budiman & Neil G. Ruiz, *Asian Americans are the Fastest-Growing Racial or Ethnic Group in the U.S.*, PEW RSCH. CTR. (Apr. 29, 2021), <https://www.pewresearch.org/short-reads/2021/04/09/asian-americans-are-the-fastest-growing-racial-or-ethnic-group-in-the-u-s/> [https://perma.cc/NW5N-DDPB].

39. See Budiman & Ruiz, *supra* note 38.

40. Neil G. Ruiz & Abby Budiman, *Demographics: 8 Charts on Asian Americans, the Fastest-Growing Immigrant Group in the U.S.*, WORLD ECON. F. (May 6, 2021), <https://www.weforum.org/stories/2021/05/us-united-states-america-asian-population-demographics-facts/> [https://perma.cc/MY7G-KHS5].

41. Jens Manuel Krogstad & Carlyne Im, *Key Facts About Asians in the U.S.*, PEW RSCH. CTR. (May 1, 2025), <https://www.pewresearch.org/short-reads/2025/05/01/key-facts-about-asians-in-the-us/> [https://perma.cc/4582-A8C3]; NAT’L ASS’N L. PLACEMENT, INC., 2024 REPORT ON DIVERSITY IN U.S. LAW FIRMS 21 (2025).

42. See NAT’L ASS’N L. PLACEMENT, INC., *supra* note 41, at 21.

43. TYLER DANG, KATHERINA FANG, BENJI LU, MICHAEL TAYAG & GOODWIN LIU, *A PORTRAIT OF ASIAN AMERICANS IN THE LAW* 2.0 30 (2022).

44. *Id.*

45. See *id.* at 31.

46. See *id.*

47. See *id.* at 31–32.

48. See *id.* at 32.

49. See, e.g., *Private Client Services*, KATTEN, <https://katten.com/private-client-services> [https://perma.cc/KQ4K-FFTJ]; *Practice Area Individual Client Services*, ZUKERMAN GORE BRANDEIS & CROSSMAN, LLP, <https://www.zukermangore.com/practice/individual-client-services>

be the lead on such matters, attorneys must build a repertoire with clients; but as a first-year or junior associate, it is difficult to have those opportunities.⁵⁰ The longer an attorney works at a law firm, the more time there is for that attorney to build a relationship with a client to take on their private services. If an attorney leaves early on, they may not reach the level of client interaction seen in private client services beyond the transactional aspect of the work. Overall, with restricted access to East Asian American attorneys who can better understand the cultural sensitivities of their clients, East Asian Americans reasonably may be hesitant in seeking out estate planning services.

At the same time, legal scholars have recognized that when clients of a particular race seek representation by a lawyer of the same race, a client's heightened expectations of a lawyer as well as the potential for "race betrayal" can cause concern for both the client and the attorney.⁵¹ As to the first issue, it is possible that a client will select a lawyer of the same race due to the expectation that the lawyer of the same race can be trusted based on race commonality.⁵² This concern may overwhelm newer attorneys who do not experience the same expectations from other clients. These attorneys may feel as though they must "help more," and such pressure could weigh on the representation.⁵³ As to the second issue of "race betrayal," there may be times an East Asian American attorney is not aware of the cultural sensitivities shared by members of their community.⁵⁴ Indeed, there is an assumption being made in suggesting that East Asian Americans would want an attorney of the same race: that the attorney would actually have the same cultural beliefs and an understanding of a shared history of prejudice and oppression. Professor Lawton at DePaul University College of Law has laid out these concerns in her article, *Am I My Client? Revisited: The Role of Race in Intra-Race Legal Representation*:

Same-race clients often initially look at us as one of their own. Their comments and behavior suggest that they see in us someone who could feel their pain and solve their problems for them because of the assumption that of course we understand their pain because we are of the same race.⁵⁵

However, it may not always be the case that an attorney of the same race shares the same beliefs and ideas as it relates to cultural experiences. It is conceivable that there are some East Asian American attorneys who do not speak about death in a reserved manner, or who do not understand the concept of the family seeking to act as a unit in decision making processes. Thus, the client may ultimately feel disappointed in having sought out an attorney of their own race who does not share those values.

[<https://perma.cc/Q5VP-GRHL>].

50. See *How to Succeed as a Junior Associate*, BLOOMBERG L. (Feb. 27, 2023), <https://pro.bloomberglaw.com/insights/business-of-law/how-to-succeed-as-a-junior-associate/#interact> [<https://perma.cc/GS36-2TQE>] (noting that junior associates usually do not interact with clients early on in their careers).

51. See Lawton, *supra* note 37, at 37–40.

52. See Lawton, *supra* note 37, at 37–39.

53. Lawton, *supra* note 37, at 39.

54. See Lawton, *supra* note 37, at 39–40.

55. Lawton, *supra* note 37, at 39.

Additionally, having representation from a member of the same community could present a concern that private information might ultimately be released to others in the community. For example, Global Atlantic Financial Group has suggested if an Asian American community is close-knit, an Asian American client may be worried that confidences will be broken and information will spread if the financial planner is a member of the close-knit community.⁵⁶ Global Atlantic suggests that concerns of leaking secretive financial information may drive an Asian American testator to work with a non-Asian American professional.⁵⁷ Although an attorney's ethical duty to maintain confidences would not permit the sharing of confidential information,⁵⁸ the client may not fully understand the operation of the ethical rules or believe they pose a significant enough barrier to protect their information. Moreover, not all members of the estate planning community are attorneys and thus are not always bound by the same ethical restraints.

Even with these considerations in mind, East Asian American clients would benefit from having access to attorneys who they can trust to understand and relate to their cultural needs when dealing with the sensitive issue of preparing for the administration of one's estate. Of course, there may be certain scenarios where those expectations are not met or where specific personal concerns about privacy result in the selection of a non-East Asian American attorney. Nonetheless, the objective is to achieve a diverse legal community where all options are available depending on the desires and goals of the client, which requires an increase in representation of East Asian Americans in the legal community, especially in leadership roles. Overall, "for many attorneys of color . . . race is an integral part" of their identity and guides their desire to connect and support their communities with legal representation.⁵⁹

C. *Challenges in Probate Court: Language Barriers for East Asian American Testators, Witnesses, and Administrators*

On several occasions, discussed in depth below, East Asian Americans have had their wills contested, mainly from their own children, on the grounds that the will was not duly executed. These cases reveal that when a language barrier is present, the proponent of a will has a more difficult time proving that the will formalities for due execution have been adequately met. Testators must understand that a will represents their wishes as to how to distribute their property after having passed. Similarly, witnesses must attest that the document being "published" to them represents the last will and testament of the testator. If a will is not written in a language that the testator and witnesses fully understand, or if an execution ceremony is conducted in an unfamiliar language, challenges may arise on the basis of testamentary capacity in the case of the testator, and on the basis of due execution through compliance with the will formalities. These concerns can also expand

56. *Growing Your Asian American Client Base*, GLOB. ATL., <https://www.globalatlantic.com/professionals/thriving-practice/advanced-markets/growing-your-asian-american-client-base> [<https://perma.cc/J2M8-KYYU>].

57. *Id.*

58. See MODEL RULES OF PRO. CONDUCT r. 1.6 (AM. BAR ASS'N 1983).

59. Lawton, *supra* note 37, at 21–22.

to the validity of power of attorney and premarital agreements when presented in probate proceedings. Finally, language barriers have been used to challenge the ability to administer an estate, albeit without much success. Thus, when language barriers are present, as the following cases demonstrate, a non-recipient translator with familiarity of legal terms and two counterparts of the same document in each language can present an invaluable benefit to East Asian American testators and witnesses.

In *In re Po Jun Chin*, the testator's sons, Theodore and Philip Chin, moved for summary judgment, asking the court to grant probate to their mother's instrument dated April 10, 2003, while also asking the court to dismiss objections filed by their sister, Patricia Chin, the testator's daughter.⁶⁰ Patricia Chin cross-moved for summary judgment to deny probate of the instrument on multiple grounds, including an argument that the instrument was not duly executed as a will.⁶¹ Ms. Chin asserted that the will was not duly executed by the decedent because her mother was not fluent in English and thus could not understand the terms of the will that she signed.⁶² Ms. Chin pointed to the testimony of her mother's attorney, Kaplan, where he said it would be "stretching it" to say that the mother could speak English.⁶³ Further, it was "undisputed that Kaplan could not speak Chinese and that a Chinese translator was not used when the instrument was drafted or executed."⁶⁴

The testator's sons responded by producing a self-proving affidavit signed by the attesting witnesses which stated that their mother was able to read and write in English.⁶⁵ Further, they pointed to a portion of Kaplan's testimony where he stated that he spoke with the decedent before and after the will was signed.⁶⁶ Finally, the sons also submitted documents to prove that the mother had written in English, including copies of checks and notebook entries.⁶⁷

The Queens County Surrogate Court observed that "[a]lthough evidence of a testator's lack of facility with the English language is not 'an insuperable barrier' to a finding of due execution," when a testator is not fluent in English, such a fact imposes a higher burden on the proponent of the will to establish that the testator's mind accompanied the act, and that the instrument executed truly represents the decedent's wishes.⁶⁸ In such cases, the court will ask "whether the evidence shows that decedent knew and understood the contents of the instrument that she was signing."⁶⁹ Thus, with the facts before the court, there was conflicting evidence on the "decedent's ability to understand, speak and read English," as well as undisputed

60. *In re Po Jun Chin*, 2018 WL 493306, at *1 (N.Y. Sur. Ct. Jan. 2, 2018).

61. *Id.*

62. *Id.* at *4.

63. *Id.*

64. *Id.*

65. *Id.* at *5.

66. *Id.*

67. *Id.*

68. *Id.* (citing *In re Albarino's Will*, 256 N.Y.S.2d 762, 765 (Sur. Ct. 1964), *decree aff'd sub nom. In re Albarino's Will*, 256 N.Y.S.2d 784 (App. Div. 1965), *aff'd*, 212 N.E.2d 436 (N.Y. 1965)).

69. *Id.*

evidence “that the propounded instrument was written and the ceremony was executed entirely in English with no translation provided,” which created an issue of material fact.⁷⁰ Ultimately, the *In re Po Jun Chin* court denied summary judgment to both parties on the issue of due execution.⁷¹

A similar scenario arose in *In re Will of Sook Li*, where Suey Quon Li, one of the decedent’s daughters, moved for summary judgment to deny her mother’s will to probate on multiple grounds, one of which was a lack of due execution of the will because of a language barrier.⁷² The decedent’s other daughter and son, Sau Kwan Li and Jin Koon Li, opposed the motion and moved for summary judgment to have the will admitted to probate.⁷³

In support of her motion, Suey Quon Li argued that both of the attesting witnesses to the will could not recall whether the decedent could or did speak to them in English.⁷⁴ She also submitted nursing facility records from 2009 and 2016 where the decedent was described as speaking only Chinese, and where the facility had to hire a translator for her.⁷⁵ Finally, Suey Quon Li pointed to emails from the decedent’s attorney, where the attorney would communicate with Sau Kwan Li regarding the terms of the will rather than the decedent, implying that the decedent would not have been able to speak with the attorney due to a language barrier.⁷⁶ Sau Kwan Li had testified to the opposite, where she stated that “the decedent understood ‘quite a bit of English,’ and ‘now and then’ the decedent would have conversations” with Sau Kwan Li in English while watching television together.⁷⁷

Citing *In re Po Jun Chin*, the Queens County Surrogate Court described in more detail the concerns of admitting a will where the testator did not clearly speak the language that the will was written in, as

where a testator is not fluent in English, there is the possibility that the testator may not have known the contents of what was being signed, or understood the significance of what was transpiring at the time, and, therefore, there is a greater burden in establishing that the mind of the testator accompanied the act, and that the instrument executed speaks the testator’s language and expresses the testator’s will.⁷⁸

The court held that the “specific evidence presented in this case, especially the documentary evidence from disinterested parties pertaining to the decedent’s lack of facility with English” created issues of material fact which could not be summarily determined.⁷⁹ The *In re Will of Sook Li* Court decided to deny both motions for summary judgment.⁸⁰

70. *Id.* at *5–6.

71. *Id.* at *6.

72. *In re Will of Sook Li*, 151 N.Y.S.3d 845, 848–49 (Sur. Ct. 2021).

73. *Id.*

74. *Id.* at 852.

75. *Id.*

76. *Id.*

77. *Id.*

78. *Id.* at 853.

79. *Id.*

80. *Id.*

Language barrier challenges also have arisen when addressing the formalities for witnesses' attestation to wills. In *In re Estate of Pascal*, a New York surrogate court admitted a will to probate although one of the attesting witnesses was not proficient in English.⁸¹ In this case, the decedent executed a will on February 22, 1954.⁸² When he died, his widow and his brother objected to the probate of his will.⁸³ Although they initially asserted fraud, undue influence, and lack of testamentary capacity, they eventually dropped those claims.⁸⁴ The remaining issues as to the will's validity addressed whether the instrument was duly published by the testator and whether he requested that the witnesses attest to it.⁸⁵

The New York County Surrogate Court found the following facts persuasive in admitting the will to probate over their objections: the document was a holographic will that opened with the language "[t]his is my will"; the testator orally identified the document to one of the witnesses and he asked that person to witness the execution of his will; the testator also asked the first witness to procure the subscription of the second witness; and the second witness was told of the nature of the document and signed her name in the presence of the testator.⁸⁶ With all these facts considered, the court held that the testator duly published the will and had asked the witnesses to attest to it.⁸⁷

The objectors then argued that because one of the attesting witnesses was not proficient in English—but rather, spoke Chinese—that she could not have properly attested to the document.⁸⁸ The court rejected such an assertion.⁸⁹ The court, after considering testimony from the attesting witness and other evidence, determined it had "been established that both witnesses were cognizant of the nature of the instrument and the function they were performing in attesting it."⁹⁰ Thus, although one of the attesting witnesses spoke negligible English, the court held that "[p]roof of that witness' comprehension of her act of attestation is not dependent upon a fragment of a conversation inasmuch as her understanding of her act was available through her testimony."⁹¹

Relatedly, in *In re Estate of Chi-Chuan Wang*,⁹² summary judgment was denied to both parties, the daughter and grandson of the decedent, on claims of whether the issues of testamentary capacity, undue influence, or fraud were present to invalidate the decedent's will.⁹³ The daughter sought to invalidate her

81. *In re Estate of Pascal*, 152 N.Y.S.2d 185, 189 (Sur. Ct. 1956).

82. *Id.* at 186.

83. *Id.*

84. *Id.*

85. *Id.*

86. *Id.* at 188.

87. *Id.*

88. *Id.* at 187–89.

89. *Id.* at 189.

90. *Id.* at 188.

91. *Id.* at 189.

92. *In re Estate of Chi-Chuan Wang*, No. 2550/03, 2010 NYLJ LEXIS 1197 (N.Y. Sur. Ct. Apr. 28, 2010).

93. *Id.* at *1, *18.

father's will, while the grandson sought to dismiss the challenges.⁹⁴ In this case, the decedent spoke both English and Chinese.⁹⁵ However, when the will was being executed, the decedent did not have a conversation in English with the attesting witnesses.⁹⁶ Consequently, the court gave little weight to the credibility of the attesting witnesses in terms of their abilities to verify the will's valid execution, given the witnesses could not understand the same language the decedent spoke.⁹⁷

Moreover, the fact that the decedent did not speak in English with the attesting witnesses prompted the court to focus on concerns that those who spoke Chinese with the decedent at the time of the will execution were improperly influencing him.⁹⁸ Indeed, one of the attesting witnesses could not affirmatively assert there was no improper influence being made on the decedent.⁹⁹ This case stands for the important proposition that all conversations during the will execution, not just those related directly to the content of the will's provisions, should be provided in both languages to all necessary and present parties for the execution ceremony, as attesting witnesses are often vital for a will's admission to probate and leaving them out of the conversation only invites successful challenges to the will's validity.

Another common estate planning tool, a directive for control of remains, has been contested on the grounds that the instructions were not properly translated. In *Dolch v. Chen (Conservatorship of the Person & Estate of Wong Shou Chen)*,¹⁰⁰ the First District Court of Appeal in California denied enforcement of documents which were purported to direct control of the remains of conservatee Madame Wong Shou Chen.¹⁰¹ The conservator had sought adjudication as to who would be authorized to control the remains of the conservatee.¹⁰² The conservatee's daughter, respondent Maria Fang, claimed authorization as next of kin, and the conservatee's step-grandson, appellant James Chen, claimed authorization under a series of documents.¹⁰³ The two family members had a history of distrust, both having sought to be Madame Wong Shou Chen's conservator, where a neutral professional conservator was instead chosen.¹⁰⁴ To receive control of the conservatee's remains, the step-grandson presented a series of documents, which showed that the conservatee wished to be buried in Hong Kong alongside her deceased husband.¹⁰⁵ Madame Wong Shou Chen had lived in Hong Kong for more than fifty years.¹⁰⁶ However,

94. *Id.* at *1.

95. *Id.* at *5.

96. *Id.* at *11.

97. *Id.*

98. *Id.* at *11, *15.

99. *Id.* at *15.

100. *Dolch v. Chen*, No. A134510, 2012 Cal. App. Unpub. LEXIS 6742 (Sep. 17, 2012). This opinion is unpublished and may not be cited in legal briefs; however, for academic purposes (and the real-life consequences for the parties involved), it demonstrates what probate courts and appeals courts consider in deciding to accept estate planning instruments.

101. *Id.* at *17.

102. *Id.* at *1.

103. *Id.*

104. *Id.* at *2.

105. *Id.* at *6.

106. *Id.* at *3.

her daughter brought her to California to initiate her conservatorship.¹⁰⁷ Since then, her daughter and step-grandson had engaged in a series of accusations against one another regarding the conservatee's estate.¹⁰⁸

To show that either the step-grandson should receive control over the remains, or in the alternative, the conservatee's wishes should be honored, the step-grandson presented a series of documents signed by the conservatee and her stepson (the step-grandson's father).¹⁰⁹ The court did not go to great lengths to describe the documents as anything but documents, but does note that the two sets of two documents, four in total, were executed in 1991 and 1992.¹¹⁰ All four documents were executed and witnessed in Hong Kong, with three of the four documents witnessed by Hong Kong solicitors.¹¹¹ All the documents were in English, with the exception of limited Chinese characters which were believed to be translations of names.¹¹² The conservatee had signed her name in Chinese for two of the documents, and the stepson had signed the other two (accepting responsibility for the directions) in English.¹¹³

There were multiple issues with accepting the documents as compliant with the statutory formalities, such as the fact that the documents name the step-grandson's father as the responsible party for the remains and not the step-grandson himself.¹¹⁴ However, the appeals court heavily relied on the fact that the documents were in English when the conservatee only spoke Chinese.¹¹⁵ The appeals court identified the language discrepancy as the first of three reasons as to why the instructions were legally insufficient:

We see at least three reasons why the documents in this case do not qualify as directions sufficient to satisfy the statutory requirements. The first, and most glaringly obvious, is that Exhibits 1 and 3 (Wong's directions that Robert "will take care of my funeral arrangements" and "is directed to assume full responsibility therefor") are *in English*—a language that Wong indisputably did not understand. And there is no evidence whatsoever of any Chinese translations. Thus, it is impossible to conclude these documents are clear and complete instructions *by the decedent*.¹¹⁶ (Emphasis original.)

The step-grandson previously attempted to argue to the probate court that English is an official language in Hong Kong, and that it is not unusual to prepare these sort of documents in English for court usage later on.¹¹⁷ He explained it was customary for translations to be given to Chinese speakers by Hong Kong

107. *Id.*

108. *Id.* at *2.

109. *Id.* at *4.

110. *Id.* The court consistently referred to these documents just as documents, but briefly mentioned they were being offered as written instructions on who had authority to control the disposition of Wong's remains upon her death. *See id.* at *2.

111. *Id.*

112. *Id.*

113. *Id.* at *4–6.

114. *Id.* at *14.

115. *See id.* at *13–14.

116. *Id.* at *13.

117. *Id.* at *9 n.5.

attorneys.¹¹⁸ The probate court was not convinced and neither was the appeals court, finding that despite any customs, “Chen produced no *evidence* of the translation procedure he describes. Nor did he produce *evidence* that Exhibits 1 and 3 were translated into Chinese for Wong’s understanding before she signed them.”¹¹⁹ (Emphasis original.)

Aside from the failure of enforcing the documents, the step-grandson argued the probate court, and now the appeals court, should have ordered the remains be sent to Hong Kong under its plenary discretion, given that the probate court had previously ordered the conservatee be sent back to Hong Kong but that she had been unable to go due to her declining health.¹²⁰ The appeals court did not budge and affirmed the probate court’s rejection pursuant to its discretion.¹²¹ The appeals court decided domicile was not controlling, and that the conservatee would likely pass away in California.¹²² Ultimately, control of the remains was given to the daughter.¹²³ Thus, a sad story emerges where the inability of an East Asian American to speak English prevented what was very likely to be the desired funeral rights of the future decedent, all because translation could not be proven (despite custom). Moreover, the fact that the conservatee signed in her native language, when the rest of the document was in English, presented a significant concern for the court, although the signing was probably not of concern to the conservatee or the Hong Kong solicitors.

Premarital agreements, accomplished earlier on in life, also may constitute a form of estate planning. A premarital agreement can be used to limit a spouse’s access to the other’s estate upon death.¹²⁴ In *Rector v. Kim*,¹²⁵ the Court of Appeals of Virginia declined to disturb a premarital agreement which was in English, although the wife only spoke Korean.¹²⁶ There, the decedent’s spouse attempted to claim an elective share, allowances, and exempt property from her husband’s estate.¹²⁷ However, a premarital agreement had been signed and notarized, which waived each spouse’s right to seek an elective share, allowances, or property exemptions from the partner’s estate.¹²⁸ The wife challenged the validity of the premarital agreement, partially on the grounds that the document was in English and that she only spoke Korean.¹²⁹ When the premarital agreement had been notarized, the notary spoke to the wife in Korean, and thus did not feel the need to bring in an interpreter.¹³⁰ Nonetheless, the spouse claimed she was unable to understand the

118. *Id.*

119. *Id.*

120. *Id.* at *16–17.

121. *Id.* at *17.

122. *Id.* at *16.

123. *Id.* at *16–17.

124. See SITKOFF & DUKEMINIER, *supra* note 36, at 555.

125. *Rector v. Kim*, No. 0859-24-4, 2025 LX 483412 (Va. Ct. App. Oct. 14, 2025).

126. *Id.* at *1–2.

127. *Id.* at *1.

128. *Id.* at *4.

129. *Id.* at *7.

130. *Id.* at *6.

document and did not know what it was when she signed it.¹³¹ The spouse sought to have her interpreter testify at trial that she had never heard of a premarital agreement between the parties, a request which was denied due to failures in meeting discovery requirements.¹³²

The court declined to find that the language barrier justified invalidating the premarital agreement, independent of whether the interpreter should have been allowed to testify.¹³³ The court concluded that any error to exclude the interpreter's testimony was harmless because the wife had seven weeks to review the agreement with her interpreter and did not do so.¹³⁴ The court noted the issue did not boil down to whether an interpreter was present at the moment of signing, but rather, whether there was an opportunity to review the agreement with the interpreter for seven weeks prior to signing and that the wife did not utilize that opportunity.¹³⁵ The court upheld enforcement of the premarital agreement and denied the wife access to an elective share, allowance, or exempt property from her deceased husband's estate.¹³⁶ This case differs from those previously discussed, in that rather than demanding an East Asian American surmount challenges from others in validating execution of their own documents, an East Asian American is challenging the validity of a document she signed based on language discrepancies. Nonetheless, this case continues to reveal the importance of translation services and counterparts of documents in both offensive and defensive measures. Language barriers can be used as an offensive challenge to upset an estate plan, or as a defensive measure to prevent enforcement against an East Asian American party.

East Asian Americans have dealt with probate issues beyond the ability to serve as an attesting witness or to execute documents: they have also faced challenges in securing a place as an executor or administrator of their family member's estate. East Asian Americans have had to counter allegations that the inability to speak English makes an administrator legally incompetent to administer an estate.¹³⁷

The Supreme Court of California has rejected that notion.¹³⁸ In 1895, although Chinese individuals had been excluded from entering the United States, they were able to serve as administrators to their families' estates.¹³⁹ In *In re Estate of Li Po Tai*, the mother of the testator's child, Lee See, was issued letters testamentary but later had those letters revoked.¹⁴⁰ In her place, a public administrator with no nuclear relation to the testator, A. C. Freese, was issued letters of administration.¹⁴¹ The eldest son of the testator petitioned to revoke the letters of administration

131. *Id.* at *7–8.

132. *Id.* at *17.

133. *Id.* at *18–19.

134. *Id.*

135. *Id.*

136. *Id.* at *23–24.

137. *In re Estate of Li Po Tai*, 41 P. 486, 487 (Cal. 1895).

138. *See id.*

139. *See id.*; *see also* Act of May 6, 1882 (Chinese Exclusion Act), ch. 126, 22 Stat. 58, 58–59 (repealed 1943) (prohibiting immigration of Chinese laborers for ten years).

140. 41 P. at 486.

141. *Id.*

given to the public administrator and to instead receive the letters of administration for himself.¹⁴²

The Supreme Court of California stated that the policy of California's Code of Civil Procedure mandated the holding that "[w]hen executors have been appointed by the decedent, if they cannot act, or will not act, or are not allowed to act, then the same persons in the same order are entitled to letters of administration with the will annexed" as though that person had died intestate.¹⁴³ The order of preference placed the eldest son ahead of the public administrator.¹⁴⁴ The court also held that "if one of the persons preferred by the law asks that the administrator (with or without the will annexed) be removed and himself appointed, his request should be granted if he is legally competent to discharge the [estate]."¹⁴⁵

The public administrator had challenged the legal competency of the eldest son at the superior court due to the eldest son's inability to speak English.¹⁴⁶ The superior court agreed, and refused to revoke the public administrator's letters and further refused the issuance of letters of administration to the eldest son.¹⁴⁷ The Supreme Court of California reversed, finding that the language barrier did not "show lack of understanding," and that "the other evidence showed that the petitioner was a man of intelligence and education."¹⁴⁸ Thus, despite the anti-Asian racism that plagued American society, the Supreme Court of California held that an inability to speak English did not render a potential administrator legally incompetent for purposes of administering an estate.¹⁴⁹ Interestingly, while more recent cases have allowed will contests to proceed based on challenges to due execution of the will emerging from language discrepancies, such as in *In re Po Jun Chin* and *In re Will of Sook Li*, a language barrier has not been determinative of legal competency to administer an estate in California since 1895.¹⁵⁰

While unlikely to have been noticed by the Supreme Court of California, this was an important holding in encouraging East Asian Americans to engage in estate planning. Considering the importance of values of family and privacy within certain East Asian cultures, an opposite ruling would have likely discouraged East Asian Americans from drafting wills and estate planning instruments out of concerns that a public administrator would become intimate with the intricacies of their family life and property. Although East Asian Americans experienced this victory in 1895, the current and ongoing strains of finding a culturally competent lawyer and surviving a will contest for lack of due execution of the will disincentivize East Asian Americans from pursuing estate planning. These issues are likely

142. *Id.*

143. *Id.* at 488.

144. *Id.*

145. *Id.*

146. *Id.* at 488–89. The public administrator had "principally relied" on other grounds to challenge the petitioner's request, but the issue of competency was ultimately the grounds for the decision of the superior court.

147. *Id.*

148. *Id.* at 489.

149. *Id.*

150. *See id.*

contributing to the underrepresentation of East Asian American testators compared to white American testators generally.¹⁵¹

In sum, while East Asian Americans serving as witnesses or administrators have been successful in overcoming challenges to their competency when language barriers are present, testators have faced more significant challenges in overcoming language barrier concerns as evidence of undue execution of the will.¹⁵² Even for estates that survive such challenges, the process of defending the estate and appealing when necessary is costly, inconvenient, and upsetting.¹⁵³ For many individuals involved in the probate of a will, closure of the person's death is unavailable until the estate has been closed. Thus, the expectation that family members may contest the will if unhappy with its terms, knowing that they can point to the language discrepancies between either witnesses or testators and the will itself, likely disincentivizes East Asian Americans from executing a will since they can expect a costly and emotionally distressing process to accompany its probate.

There are a multitude of steps which can be taken to help prevent the occurrence of these challenges or at least hinder their success on the merits. First, there are specific tools in the estate planning arsenal, such as family meetings and no-contest clauses, which can be utilized to help prevent the occurrence of will contests. Moreover, best practices include having two counterparts of the same document executed, both in English and the native language of the testator, witness, or party to an agreement.¹⁵⁴ At the least, having a third-party translator with proficiency in legal terms present during a document's drafting and at execution ought to provide strong protections if a challenge is later made. These solutions are addressed in Part IV.

II. A COMPARATIVE SUMMARY OF ESTATE PLANNING: THE UNITED STATES AND EAST ASIA

China, Japan, and South Korea provide for estate planning instruments and execution formalities that differ from those in the United States. Consequently, for East Asian American families, especially those who immigrated more recently, there may be confusion surrounding whether a certain estate planning instrument will be valid in the United States. This Article compares some of the major differences in types of wills and will execution formalities between the United States and East Asia to not only provide clarity for readers but also to demonstrate how small changes can create catastrophic consequences for the validity of a will across these regions. Not understanding these differences, let alone not knowing there even are

151. Of course, other historical factors have contributed to demotivating East Asian Americans to pursue estate planning services, including wealth inequality; however, such factors are beyond the scope of this Article.

152. See *In re Po Jun Chin*, 2018 WL 493306, at *1; see also *In re Will of Sook Li*, 151 N.Y.S.3d at 848–49; see *In re Estate of Li Po Tai*, 41 P. at 486.

153. See SITKOFF & DUKEMINIER, *supra* note 36, at 41 (observing that probate has “developed a reputation for being slow, cumbersome, and expensive.”).

154. See *Liu v. Wang (Estate of Wang)*, No. E055476, 2014 Cal. App. Unpub. LEXIS 313, at *14 (Jan. 16, 2014) (giving weight to the fact that the prenuptial agreement was executed in both English and Chinese); *Estate of Yi Li*, 2009 NYLJ LEXIS 4300, at *1 (N.Y. Sur. Ct. July 15, 2009) (admitting to probate both English and Chinese counterpart wills).

differences, can create a significant barrier for East Asian Americans to adequately prepare their estates.

In the United States, each state's probate code includes a provision known as the Wills Act which lays out the requirements to execute a valid will.¹⁵⁵ The United States generally allows for three types of wills: attested wills, holographic wills, and notarized wills.¹⁵⁶ The three core formalities of forming an attested will are as follows: a writing, a signature, and attestation.¹⁵⁷ Thus, an attested will must be written on some medium, have a signature from the testator, and be witnessed and attested to by a required number of individuals—typically two.¹⁵⁸

These rules evolved from the history of will execution in Western culture. In 1677, the Statute of Frauds was adopted in England, which required a “written will signed by the testator in the presence of three witnesses for a testamentary disposition of land.”¹⁵⁹ Dispositions of personal property had fewer formal requirements.¹⁶⁰ Then, in 1837, England adopted a Wills Act which required the “same formalities for all wills regardless of the nature of the property disposed of under the will.”¹⁶¹ The 1837 Wills Act also lowered the required number of subscribing witnesses from three witnesses to two witnesses.¹⁶² These laws would later serve as models for the states in adopting their own Wills Acts.¹⁶³

Now, in addition to the evolution of state laws, the United States has the Uniform Probate Code (U.P.C.).¹⁶⁴ U.P.C. § 2–502 requires that witnessed or notarized wills be made in writing, be signed by the testator or by someone who the testator directs to sign on behalf of the testator in the testator's conscious presence, and be executed under one of the following conditions where: (1) two witnesses attest to the will shortly after the testator either signs the will or acknowledges the signature or the will itself to the witnesses, or; (2) the testator acknowledges the will before a notary public.¹⁶⁵ Under that same section, if a will is not properly attested to, then it may survive as a holographic will if “the signature and material portions of the document are in the testator's handwriting.”¹⁶⁶

Will formalities vary between the United States and East Asian countries, specifically China, Japan, and South Korea. These three countries provide rich insights into some of the distinct variances between the estate planning systems of East Asia and the United States but are not representative of all Asian countries. Thus, this comparison is limited to China, Japan, and South Korea as case studies rather than a holistic effort to document the differences across all Asian countries.

155. SITKOFF & DUKEMINIER, *supra* note 36, at 144.

156. SITKOFF & DUKEMINIER, *supra* note 36, at 144.

157. SITKOFF & DUKEMINIER, *supra* note 36, at 144.

158. SITKOFF & DUKEMINIER, *supra* note 36, at 144–45.

159. SITKOFF & DUKEMINIER, *supra* note 36, at 145.

160. SITKOFF & DUKEMINIER, *supra* note 36, at 145.

161. SITKOFF & DUKEMINIER, *supra* note 36, at 145.

162. SITKOFF & DUKEMINIER, *supra* note 36, at 145.

163. SITKOFF & DUKEMINIER, *supra* note 36, at 144–45.

164. SITKOFF & DUKEMINIER, *supra* note 36, at 145–46.

165. U.P.C. § 2–502 (UNIF. L. COMM'N 1990, as amended 2008).

166. *Id.*

In China, there are notary wills, written wills, sound-recording wills, and emergency oral (nuncupative) wills.¹⁶⁷ For notary wills, the testator works with a notary agency to draft the will.¹⁶⁸ There are two kinds of written wills: testator-written and witness-written. The testator-written will, written in the testator's handwriting, does not need witnesses.¹⁶⁹ The witness-written will, drafted by one witness, requires two witnesses to be present and to sign the will, alongside the testator.¹⁷⁰ A sound-recorded will is a will recorded by audio, in which two witnesses must be present for the recording.¹⁷¹ An emergency oral will must also have two witnesses, and the testator is obligated to commit the will to writing or sound recording once the emergency passes if able to do so, in which case the emergency oral will is invalidated.¹⁷² Moreover, a successor cannot serve as a witness to the will.¹⁷³ In the United States, sound-recorded and emergency oral wills are generally not permitted; a writing is required.¹⁷⁴ Thus, recently immigrated Chinese Americans may expect a sound-recorded or nuncupative will to have effect in the United States, but it may not. Moreover, an heir in the United States usually can serve as a witness to the will, although some states prohibit beneficiaries (who may or may not be heirs) from serving as witnesses.¹⁷⁵

In Japan, generally there are three types of wills, which differ somewhat in their formalities from the states' Wills Acts: a holographic will, a notarial will, and a sealed and notarized will.¹⁷⁶ For a holographic will in Japan, the document must be in the testator's own handwriting, with his or her seal, signed, and dated.¹⁷⁷ The holographic will does not need to be written in Japanese and witnesses are not required.¹⁷⁸ The testator's full name must be used.¹⁷⁹ The notarial will requires the testator to recite its contents to two witnesses and a notary.¹⁸⁰ The notary transcribes the testator's instructions.¹⁸¹ Once the testator and the witnesses sign and affix their seals, the notary indicates the will complies with the requisite formalities and signs and affixes their seal on the instrument.¹⁸² Finally, a sealed and notarized will

167. Jicheng fa (继承法) [Law of Succession of the People's Republic of China] (promulgated by the Standing Comm. Nat'l People's Cong., Apr. 10, 1985, effective Oct. 1, 1985), art. 17, P.R.C. LAWS.

168. *Id.*

169. *Id.*

170. *Id.*

171. *Id.*

172. *Id.*

173. *Id.* art. 18.

174. There are a handful of states which allow for nuncupative wills under very strict circumstances. *See, e.g.*, N.Y. EST. POWERS & TRUST LAW § 3-2.2 (2025).

175. *See, e.g.*, OHIO REV. CODE ANN. § 2107.15 (2025).

176. *See* MINPŌ [CIV. C] art. 967 (Japan). There are some wills by special formality, such as wills for a person under quarantine (art. 977), and a will for persons aboard a vessel (art. 978). This Article focuses on the more standard types of wills in Japan.

177. *Id.* art. 968.

178. *Id.*

179. *Id.*

180. *Id.* art. 969.

181. *Id.*

182. *Id.*

requires the testator to place the will inside an enclosure after affixing his or her seal to the instrument, and then affix the same seal to the enclosure.¹⁸³ The enclosure is then presented to a notary and declared before two witnesses that the document in the enclosure is the testator's will, and the testator provides the name and address of the person who wrote the instrument.¹⁸⁴ The notary writes down the presentment date and statement of the testator on the enclosure, and then signs it and affixes his or her seal.¹⁸⁵ The testator and the two witnesses then sign the enclosure and affix their seals to it as well.¹⁸⁶

In Japan, while the notarial will avoids probate, the holographic will must be filed for probate.¹⁸⁷ This distinction does not exist in United States law, where all wills are admitted to probate.¹⁸⁸ This may lead to confusion for a Japanese American client, who believes that going to an attorney and complying with the applicable will formalities and, under the U.P.C., going to a notary to acknowledge the will, may prevent the will from being admitted to probate as is the case under Japanese law for notarial wills. These differences also may lead to a disincentive to draw a will, as learning that one's will is going to be admitted to probate and its contents accessible to any member of the public could be worrisome due to the Japanese culture surrounding privacy of finances.¹⁸⁹

As another point of comparison, in South Korea, wills are governed by the Civil Act of Korea.¹⁹⁰ The Civil Act recognizes five types of wills: holographic wills, sound-recorded wills, notarized wills, secret wills, and wills by dictation.¹⁹¹ While some of these wills are similar to those in the United States, such as holographic wills, some of these wills would not be recognized by United States probate law, such as recorded wills.¹⁹² A recorded will is a will "by a sound recording, [where] the testator must orally state the tenor of his will, his full name and the date, and the witness must orally state that the will made by the testator is due and correct and also state his full name."¹⁹³ Since recorded wills generally are not accepted under states' Wills Acts, this might cause confusion for South Korean American

183. *Id.* art. 970.

184. *Id.*

185. *Id.*

186. *Id.*

187. *Id.* art. 1004. A sealed and notarized will instrument may be opened under limited circumstances. *Id.*

188. See SITKOFF & DUKEMINIER, *supra* note 36, at 144–45.

189. See SITKOFF & DUKEMINIER, *supra* note 36, at 478 (noting that once a will is filed in probate, it "becomes a court record open to the public."); see also *Cashless Payments in Japan - Statistics & Facts*, STATISTA (May 13, 2022), <https://www.statista.com/topics/7754/cashless-payments-in-japan/#topicOverview> [<https://perma.cc/7JKK-4N7P>] (noting that one of the main reasons Japanese individuals prefer to use cash, rather than digital payments, is due to concerns of leaks of personal information). Of course, an estate planning attorney can offer non-probate transfers as an alternative for a client worried about probate, but for those who want to execute a will specifically, these concerns persist.

190. Minbeob [Civil Act] art. 1065 (S. Kor.).

191. *Id.*

192. See *In re Estate of Reed*, 672 P.2d 829, 834 (Wyo. 1983) (declining to adopt a tape recording as a writing under the state's Wills Act).

193. Minbeob [Civil Act] art. 1067 (S. Kor.).

clients.¹⁹⁴ South Korea also prohibits individuals who would receive under the will from serving as witnesses.¹⁹⁵ Thus, an attorney for a South Korean American client would benefit from familiarizing themselves with the types of wills available in South Korea so that they can advise their clients on which of those wills are accepted in the United States. Moreover, South Korean American clients should be advised that depending on which state they are in, a beneficiary may be able to serve as a witness.

Overall, these differences may cause East Asian American testators to believe they have executed a will properly when they have not, or that they can maintain a level of privacy not found in the United States probate system. Simultaneously, East Asian American immigrants would benefit from knowing that some restrictions that apply in their home countries, such as not allowing for certain witnesses who are successors or beneficiaries, are not always applicable in the United States. Educating attorneys on the international differences in estate planning will allow them to fully advise immigrant clients on those differences that exist between the United States and the client's home country in terms of will drafting and the probate system. Currently, many law school estate planning certification programs do not adequately address international estate planning.¹⁹⁶ Even if certain law schools offer a course in international estate planning, oftentimes it is not a required course for estate planning certification programs, but rather, is just an elective.¹⁹⁷ Thus, law schools should expand their course offerings in international estate planning, particularly those that cover East Asian countries. Providing future estate planning attorneys with the education needed to understand the differences between estate planning instruments in the United States and in East Asian countries will help ease East Asian Americans' worries about and unfamiliarity with the United States probate system.

III. RECENT EFFORTS TO ENGAGE EAST ASIAN AMERICANS IN ESTATE PLANNING THROUGH INCREASED USE OF CULTURAL COMPETENCY RESOURCES AND DISTRIBUTION OF EDUCATIONAL MATERIALS

The COVID-19 virus caused the death of thousands of Asian Americans, which was only compounded by the associated violence arising from narratives that attempted to link East Asians to the cause of the pandemic. The viciousness of the deaths of East Asian Americans who were attacked violently during the pandemic made headlines and caught the attention of the public and of estate planning professionals. In the wake of this dark time in East Asian American history, as discussed further below, estate planning attorneys and financial advisors have sought

194. See *In re Estate of Reed*, 672 P.2d at 834.

195. Minbeob [Civil Act] art. 1072 (S. Kor.).

196. See *Estate Planning Certificate*, TEMP. UNIV., <https://law.temple.edu/academics/degrees/estate-planning/> [<https://perma.cc/BC4S-AKUE>] (offering an estate planning certificate, but no courses in international estate planning).

197. See *Estate Planning Certificate*, B.U., <https://www.bu.edu/academics/law/programs/estate-planning-certificate/> [<https://perma.cc/VJ54-YSL9>] (offering an international estate planning course, but not as a required course for certification).

to provide resources and educational opportunities to emphasize the importance of having an adequate estate plan in place. Moreover, these efforts are representative of the larger goal of making the legal community more inclusive of East Asian Americans by strengthening accessibility to resources and committing to the elimination of discrimination and hatred.

In 2020, one in seven Asian American deaths was caused by COVID-19.¹⁹⁸ By March 2021, there were 17,747 Asian American deaths.¹⁹⁹ Furthermore, while Asian Americans constituted a smaller portion of COVID-19 deaths in the United States, “they experience[d] significantly higher excess all-cause mortality (3.1 times higher), case fatality rate (as high as 53 percent higher), and percentage of deaths attributed to COVID-19 (2.1 times higher) compared to non-Hispanic Whites.”²⁰⁰ Those numbers may be higher in actuality, considering that a “disproportionate number of COVID-19 cases among Asian Americans may not have been reported or detected” because Asian Americans were less likely to be tested for COVID-19 than any other race or ethnic group.²⁰¹ In addition to these lower testing rates, socio-economic factors and racial discrimination are leading factors in the disparities that characterize the impact of COVID-19 on Asian Americans.²⁰²

Amidst the COVID-19 pandemic, anti-Asian violence has caused many Asian Americans to lose their lives, morbidly prompting concerns for ensuring that they have planned for their estates.²⁰³ In 2021, anti-Asian hate crimes were up by 339% from 2020, with New York, San Francisco, Los Angeles, and other cities experiencing more anti-Asian hate crimes than their record numbers in 2020.²⁰⁴ San Francisco hate crimes rose from nine to sixty crimes, a 567% increase.²⁰⁵ On March 16, 2021, a shooter went on a rampage at Young’s Asian Massage and two other

198. Brandon W. Yan, Andrea L. Hwang, Fiona Ng, Janet N. Chu, Janice Y. Tsoh & Tung T. Nguyen, *Death Toll of COVID-19 on Asian Americans: Disparities Revealed*, 36 J. OF GEN. INTERNAL MED. 3545, 3545 (2021).

199. *Id.*

200. *Id.*

201. *Id.* at 3546.

202. *Id.* at 3545.

203. See Terry Tang, *Victims of Anti-Asian Attacks Reflect a Year into Pandemic*, PBS NEWS (Mar. 2, 2021, 1:04 PM), <https://www.pbs.org/newshour/nation/victims-of-anti-asian-attacks-reflect-a-year-into-pandemic> [<https://perma.cc/7SY8-KBVM>] (discussing violence and deaths of Asian Americans during the pandemic); *Covid ‘Hate Crimes’ Against Asian Americans on Rise*, BBC (May 20, 2021), <https://www.bbc.com/news/world-us-canada-56218684> [<https://perma.cc/LFE2-8UGB>] (addressing further violence and deaths); Annaliese Wee, *Pro Bono & Community Service Committee Hosts Elder Law Clinic and Presentation*, AABANY (May 13, 2021), <https://blog.aabany.org/2021/05/13/pro-bono-community-service-committee-hosts-elder-law-clinic-and-presentation> [<https://perma.cc/UY4B-F3TW>]; Shui Sum Lau, *Filial Piety and U.S. Family Law: How Cultural Values Influence Caregiving, End-of-Life, and Estate Planning Decisions in Asian American Families*, 26 UCLA ASIAN PAC. AM. L.J. 123, 143–44 (2023) (noting the importance of end-of-life planning for Asian American families amidst the COVID-19 pandemic and associated violence).

204. Kimmy Yam, *Anti-Asian Hate Crimes Increased 339 Percent Nationwide Last Year, Report Says*, NBC NEWS (Feb. 14, 2022, 10:23 AM), <https://www.nbcnews.com/news/asian-america/anti-asian-hate-crimes-increased-339-percent-nationwide-last-year-repo-rcna14282> [<https://perma.cc/W23M-RL9C>].

205. *Id.*

spas in Atlanta, Georgia, killing eight victims.²⁰⁶ Six of the victims were Asian women.²⁰⁷ In the beginning of 2022, two Asian American women were murdered in New York City: Michelle Go and Christina Yuna Lee.²⁰⁸

In May of 2021, as a result of the rise in COVID-19 deaths and anti-Asian violence during the global pandemic, the Asian American Bar Association of New York (AABANY)'s Pro Bono & Community Service Committee hosted a virtual law clinic which was co-sponsored by AABANY, the Chinese Consolidated Benevolent Association, and the Chinese Chamber of Commerce of New York.²⁰⁹ The panel of attorneys at the event spoke about the importance of estate planning during the "instability brought about by the pandemic" and the "surge in anti-Asian violence."²¹⁰ Promoted to Chinese communities throughout New York, this event provided free legal consultations on wills and estates, elder law, advance directives, and other forms of estate planning.²¹¹ Karen Eng and Pauline Yeung-Ha, both specializing in estate planning, emphasized "the importance of advance preparation in matters of healthcare and estate planning."²¹² Translations were available for non-English speakers who spoke Cantonese and Mandarin.²¹³ Thirty-one individuals seeking estate planning assistance attended the event.²¹⁴

Additionally, the American College of Trusts and Estates Counsel (ACTEC) uploaded a cultural competency video in May of 2021.²¹⁵ ACTEC released the following statement in developing this cultural competency video: "In light of the recent increase in violent attacks on Asian Americans and Pacific Islanders (AAPI) throughout the U.S., ACTEC is actively working to develop and share information that will help to advance cultural competence in the estate planning profession."²¹⁶ By connecting the increase in anti-Asian violence to the necessity of developing cultural competency among estate planning attorneys, ACTEC is implicitly recognizing the need for Asian Americans, at a heightened risk of experiencing lethal violence, to feel comfortable seeking estate planning services.²¹⁷ In its cultural competency video, ACTEC Fellows Hung V. Nguyen and Akane R. Suzuki, Asian

206. Minyvonne Burke, *Atlanta-Area Spa Shooter to Serve 4 Life Sentences in Cherokee County Slayings*, NBC NEWS (July 28, 2021, 1:01 PM), <https://www.nbcnews.com/news/us-news/atlanta-area-spa-shootings-suspect-pleads-guilty-cherokee-county-charges-n1275139> [https://perma.cc/E97W-Q748].

207. *Id.*

208. Sakshi Venkatraman, *'Nowhere is Safe': Asian Women Reflect on Brutal New York City Killings*, NBC NEWS (Feb. 16, 2022, 12:18 PM), <https://www.nbcnews.com/news/asian-america/nowhere-safe-asian-women-reflect-brutal-new-york-city-killings-rcna16173> [https://perma.cc/5KNF-DSY7].

209. Wee, *supra* note 203.

210. Wee, *supra* note 203.

211. Wee, *supra* note 203.

212. Wee, *supra* note 203.

213. Wee, *supra* note 203.

214. Wee, *supra* note 203.

215. *ACTEC Releases Video on the Importance of Cultural Competence in Estate Planning*, ACTEC (May 3, 2021), <https://www.actec.org/actec-releases-video-on-the-importance-of-cultural-competence-in-estate-planning> [https://perma.cc/F5R6-BGFL].

216. *Id.*

217. *See id.*

American attorneys, spoke to the necessity of attorneys working with an Asian American client to “understand the ways in which the client’s approach, expectations and goals in the estate planning process may be influenced by their culture and heritage.”²¹⁸

On a broader scale, over the past few years, legal and nonprofit organizations have been assisting Asian Americans in seeking out estate planning services. Many of these educational efforts include sharing estate planning knowledge and information with Asian American families. For example, Compassion & Choices, an end-of-life planning nonprofit organization, has brochures on its website regarding the California End of Life Option Act in Chinese, and the Hawai’i Our Care, Our Choice Act in Chinese, Hawaiian, Japanese, Korean, Ilokano, and Tagalog.²¹⁹

Furthermore, to gain Asian American, Native Hawaiian, and Pacific Islander (AANHPI) involvement in the organization, Compassion & Choices announced the creation of a council geared toward communicating estate planning information in a culturally competent manner to AANHPI communities.²²⁰ The organization invited potentially interested AANHPI individuals to reach out to one of the current employees about joining the council.²²¹ Finally, the organization shares testimonials from AANHPI families on their experiences in end-of-life planning, to help emphasize the personal benefits of preparing estate planning instruments, both medical and legal in nature.²²²

The American Academy of Estate Planning Attorneys (the “Academy”) released an e-book designed to increase Asian American interest in estate planning in 2022.²²³ One issue the e-book addresses is the impact of cultural practices on property ownership in Asian American communities.²²⁴ For example, the e-book shares that “27% of Asian Americans live in multi-generational households.”²²⁵ Because it is already the case that many family members are living in the home, whoever owns the home may believe “that adding a family member (often the eldest child) to title on their assets will solve their estate planning problems, including avoiding Probate and protecting against Medicaid Recovery.”²²⁶ However, adding another property owner, if created through a joint tenancy for example, can impact the disposition of that property because of the associated rights of survivorship as well as the exposure to risk from a co-owner’s creditors.²²⁷

Additionally, the e-book addresses the commonality of caregiving in Asian American families and that this unpaid task usually falls to the eldest child, which

218. *Id.*

219. *Asian American, Native Hawaiian and Pacific Islander Community*, COMPASSION & CHOICES, <https://compassionandchoices.org/take-action/community-engagement/aanhpi> [<https://perma.cc/H7K7-DQ8H>].

220. *Id.*

221. *Id.*

222. *Id.*

223. AM. ACAD. OF EST. PLAN. ATT’YS, PROTECTING ASIAN PACIFIC AMERICANS’ FAMILY LEGACIES 13 (2022) (ebook).

224. *Id.* at 2.

225. *Id.* at 4.

226. *Id.*

227. *Id.* at 5.

can create significant physical, mental, and economic challenges to the caregiver.²²⁸ Caring for an elder, while also maintaining a job and taking care of one's kids and spouse, can cause depression, anxiety, and social isolation, according to the e-book.²²⁹ Thus, the Academy proposes that the creation of an "estate plan before the need for caregiving arises ensures families and caregivers will have more tools and information to address the needs of their loved ones and themselves."²³⁰ Since estate planning includes planning for the end stages of life before death, aging parents can set up an estate plan that allows the caregiver some financial relief, which will "improve the caregiver's quality of life."²³¹ Alternatively, an estate plan could provide compensation following death by providing the caregiver a larger inheritance for their assistance.²³²

Finally, the e-book covers burial practices for Asian Americans, noting that some Asian American immigrants born in an Asian country may want their body returned home for burial with their family.²³³ The Academy recommends that such individuals set up a plan to pay for the repatriation of their remains.²³⁴ Otherwise, the surviving family members may struggle to accommodate those wishes in a short timeframe.²³⁵

These efforts aimed at educating and involving Asian Americans in the estate planning community have constituted a step in the right direction for remedying the underrepresentation of Asian Americans in preparing for the end of life. These resources have mainly tackled two goals: increasing Asian Americans' knowledge of estate planning tools in the United States and educating estate planning professionals on the importance of cultural competency in estate planning. The first goal was accomplished by providing awareness of estate planning issues that may have not crossed the minds of Asian Americans, such as the means by which to transport one's body back to their home county, as well as cautioning against certain legal action which may produce unintended consequences, such as creating a joint tenancy for property. The second goal was approached by providing cultural competence resources and training from ACTEC. Given the underrepresentation of Asian Americans, both as estate planners and as the ones with estate plans, these resources are valuable in increasing the ability for Asian Americans to approach estate planning in the United States with reassurance that their expectations will be understood and their cultural needs accounted for during the representation.

IV. SOLUTIONS: FAMILY MEETINGS, NO-CONTEST CLAUSES, AND TRANSLATORS

To prevent a drawn-out probate process or the execution of a will that is susceptible to will contests, estate planning attorneys have a multitude of tools at their

228. *Id.* at 2.

229. *Id.*

230. *Id.*

231. *Id.* at 3.

232. *Id.*

233. *Id.* at 10.

234. *Id.*

235. *Id.*

disposal to help East Asian American clients with their estate planning needs. As recognized by Sitkoff and Dukeminier in their casebook, *Wills, Trusts, and Estates*, family meetings can help soothe feelings of inferiority or anger at a parent's wishes as executed in a will.²³⁶ A family meeting is typically arranged by an estate planning attorney for a testator to gather with his or her family and explain the terms of the will.²³⁷ Family meetings allow estate planning attorneys to foster stronger family involvement in executing a will, while also providing closure to family members who would otherwise be left to speculate about the testator's choices when the will is admitted to probate.²³⁸

Further, family meetings are particularly useful when a testator anticipates a will contest from a family member, considering that an explanation by the testator may take out the blow of disappointment felt by a beneficiary who perhaps expected a certain piece of property or amount of money from the will.²³⁹ The family meeting gives that beneficiary time to cool down, so that by the time the will is probated, the individual does not feel the need to contest the will out of spite, since it is not uncommon for individuals, disappointed in their bequest under a will, to contest the will out of feeling hurt or left out.²⁴⁰ The family meeting also provides an opportunity for the testator to answer any questions the family members might have about the disposition of property, which is unavailable by the time the will is admitted to probate since the testator has passed.²⁴¹

Thus, family meetings could be particularly helpful in East Asian American families, where daughters may feel left out by the terms of a will from an East Asian American testator who may exercise a traditional preference to favor property dispositions to sons over daughters.²⁴² By allowing the daughter beneficiary to ask for an explanation from the testator, she is likely to feel a sense of closure after her discussions with the testator. Also, the daughter beneficiary should be allowed the opportunity to share her feelings with the testator and the other family members present at the meeting, which would serve as a cathartic exercise because the daughter beneficiary would feel heard and understood. Furthermore, if the daughter beneficiary were to learn of the terms of the will years before the testator's death, then enough time would pass to allow her to cool, which in turn would lower the chances of a will contest out of spite. These family meetings, therefore, could be an effective solution to prevent daughters of non-English speaking East Asian Americans from challenging the terms of the wills that their parents execute. Challenging due execution of the will because of a language discrepancy between the testator or witnesses and the will is a channel for which disgruntled children can express their discontent with the terms of the will.

Additionally, family meetings will assist in achieving the cultural competency needs of East Asian American clients by allowing more intimate involvement

236. See SITKOFF & DUKEMINIER, *supra* note 36, at 315.

237. See SITKOFF & DUKEMINIER, *supra* note 36, at 315.

238. See SITKOFF & DUKEMINIER, *supra* note 36, at 315.

239. See SITKOFF & DUKEMINIER, *supra* note 36, at 315.

240. See SITKOFF & DUKEMINIER, *supra* note 36, at 315.

241. See SITKOFF & DUKEMINIER, *supra* note 36, at 315.

242. See Lodise et al., *supra* note 2, at 74.

of the family in the development of estate planning instruments.²⁴³ By allowing the family to meet the attorney and learn of the testator's wishes, the family will feel more involved with the process and likely have a more beneficial experience, rather than learning of a will years after its execution.²⁴⁴ By organizing a family meeting, an attorney actively seeks to meet the cultural needs of East Asian American clients regarding the preference to include the family as a unit in decision-making.²⁴⁵

Another solution that will assist East Asian American testators in preventing will contests is the use of a no-contest clause.²⁴⁶ A no-contest clause discourages a will contestant by depriving that contestant of his or her bequest under the challenged will if the contestant is unsuccessful.²⁴⁷ Usually, a contestant would prefer the smaller inheritance rather than risk the entirety of the bequest in the case that a will contest fails.²⁴⁸ These clauses would especially deter a contestant who knows that their contest is unlikely to prevail but is challenging the will out of spite for its contents.²⁴⁹ Attorneys that use these no-contest clauses should be mindful of their jurisdiction, however, as different states vary on their enforcement of these clauses.²⁵⁰ The most common rule is that identified in U.P.C. §§ 2-517 and 3-905, which "is to enforce a no-contest clause only if the unsuccessful contestant lacked 'probable cause' for bringing the contest."²⁵¹ While some states completely refuse to enforce no-contest clauses, states on the other end of the spectrum will enforce a no-contest clause "even if there was probable cause for the contest or it was brought in good faith."²⁵²

Finally, there is a simple solution to prevent will contests, specifically on the issue of due execution because of language discrepancies between the testator or witnesses and the testamentary document. That solution is to either produce translated counterparts or hire a translator at the law firm when expecting non-English speaking clients, witnesses, or parties. A translator ought to be used during every step of the process, from drafting the document to executing it with the appropriate formalities. The best option would be to use counterparts with documents in both English and the native language of the testator and/or attesting witnesses. However, at the least, there should be a disinterested translator with experience in legal matters, as some inexperienced translators will explain legal matters incorrectly to the clients because of differences in interpretation.²⁵³ If the translator must use a child or other family member for the translation, the attorney should set down ground rules for requiring that the translator seek clarification for a difficult translation

243. See SITKOFF & DUKEMINIER, *supra* note 36, at 315.

244. See Lodise et al., *supra* note 2, at 74; SITKOFF & DUKEMINIER, *supra* note 36, at 315.

245. See Lodise et al., *supra* note 2, at 74.

246. See SITKOFF & DUKEMINIER, *supra* note 36, at 311.

247. See SITKOFF & DUKEMINIER, *supra* note 36, at 311.

248. See SITKOFF & DUKEMINIER, *supra* note 36, at 311.

249. See SITKOFF & DUKEMINIER, *supra* note 36, at 311.

250. See SITKOFF & DUKEMINIER, *supra* note 36, at 311.

251. SITKOFF & DUKEMINIER, *supra* note 36, at 311 (referring to U.P.C. §§ 2-517, 3-905 (UNIF. L. COMM'N 1990, as amended 2008)).

252. SITKOFF & DUKEMINIER, *supra* note 36, at 311.

253. See Lodise et al., *supra* note 2, at 76.

rather than attempt to interpret legal matters that the translator is not familiar with as a layperson.²⁵⁴ Nonetheless, any translator is better than no translator, and will prove to be beneficial for a client who may not speak English and who anticipates that there may be a challenge to the will. Such translation services prevent a disgruntled party from arguing on a summary judgment motion that no appropriate translation was provided to the testator, witnesses, or parties to an agreement.

CONCLUSION

The COVID-19 pandemic, and its effects on the East Asian American community, prompted discussion among practitioners about increasing efforts to meaningfully engage with East Asian American clients to enhance their estate planning experience. Consequently, legal and nonprofit organizations improved in their offerings on instructive materials and live lectures to benefit both East Asian American clients and estate planning professionals. These endeavors have been especially helpful, as this Article has shown that estate planning in East Asian countries often involves significant differences from the United States in the type of instruments that are accepted for testation and the instruments that can avoid probate. Nonetheless, East Asian Americans continue to experience challenges in estate planning, mainly due to the limited availability of East Asian American attorneys that can assist East Asian American estate planning clients in a culturally competent manner, as well as the legal standards for due execution of wills that plague non-English-speaking East Asian Americans. When non-English speaking East Asian American testators or witnesses are not provided translations of wills or counterparts in both English and a native language, will contests can persist. This Article has provided possible solutions for East Asian American testators, with the use of estate planning tools that are currently available, such as family meetings and no-contest clauses, in addition to multilingual counterparts and translation services. These simple, but effective solutions would demonstrate dedication to strengthening the relationship between East Asian Americans and the estate planning community.

254. See Lodise et al., *supra* note 2, at 76.