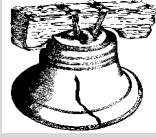


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A DOZEN OR SO QUESTIONS YOU SHOULD HAVE DISCUSSED WITH YOUR ATTORNEY BEFORE YOU MESSED UP YOUR WILL, TRUST AND ESTATE PLAN

Many clients do not get proper advice from attorneys who are not skilled in this area; and clients do not recognize the problems involved in designing these documents to protect the financial security of their family.

The following will be a series of questions that have been asked of me over the last thirty years in this field that seem to be common as there are many misunderstandings in this area.

I. WILLS

1) **Q:** *It is my understanding that wills are not subject to probate.*

A: Despite many people's misunderstandings, a will still forces you to go to Probate if, you have a certain amount of assets in your name alone. Different states will dictate what that amount is. Some people have told me if their estate is under \$600,000 or \$1,000,000 there is no probate. That is confusing tax law with probate law and is not correct.

2) **Q:** *Is it true a Trust or Will should be reviewed annually?*

A. Generally it is unlikely the family situation would change much in the next few years; the review of a Will or Trust on an annual basis is not necessary. Some of the main changes that may occur in changing a will or trust involve substantial increase in wealth; a changing of

Trustees or Executors; minor children becoming adult; desires to disinherit certain family members.

3) **Q:** *If I do not have a will does my estate go to the state?*

A: Generally, if you have any distant relative alive, the estate will not go the state. But by not having a will, there may be a costly surety bond that the family will have to absorb. It is also very likely that your assets may not be going to whom you desire. By drawing up a proper will you can prevent these problems.

III. LIVING TRUST

1) **A.** *Is a Living Trust better than a Will?*

Q. Yes, a Living Trust has far more advantages than a Will. The main purpose of drafting a Will is to avoid the state dictating who gets your money. A Trust provides a number of the following advantages if properly drafted: a Trust can avoid probate; allow you to have full control of your assets; protect your assets in the event you become disabled; protect assets that go to your children from law suits, creditors and marital claims; it can also result in substantial tax savings for income tax planning purposes after death and estate planning purposes.

2) **Q.** *When do I need a living trust?*

A. Generally, when an estate is over \$250,000 and that includes your house, life insurance and retirement accounts.

III. ATTORNEYS

1) **Q.** *My real estate attorney offered to draw up a Will or Trust for me. Isn't it true that all attorneys know how to draft these documents?*

A. Quite frankly, the drafting of Trusts and Wills is a very specialized field. Apparently, a number of years ago, former Chief Justice Burger attempted to draft his Will and caused a lot of problems because he was not familiar with a lot of the laws. Because of the specialties involved and quite, frankly a Will should be drafted by an attorney who either specializes in this area or spends a lot of time of his or her practice doing so. A properly drafted Will can save a lot of

problems for the family in the future and very often you have one shot with the Will or Trust because after death it can't be changed. Therefore a lot of problems after death can be resolved if the documents are drafted properly in the beginning.

IV. SECOND MARRIAGE AND DIVORCE

1) **Q.** *I am recently divorced and I have been told that it is important that I get a will drafted as soon as possible.*

A. Believe it or not, getting a will drafted a divorce is not necessarily the most important thing to do. Under most states, after a divorce, the former spouse is automatically cut out of the will. More importantly, make sure that all of your beneficiary designations are changed for your insurance, annuities or other types of retirement programs. Even if you do a new will, these assets pass directly to beneficiary are not affected by your new will.

The other thing to be aware of is that a will is not necessarily the best document in the event of a divorce. A trust is a far better document to set up, as it will allow you to better control your assets after death, so that you can dictate who will control money for children from a prior marriage. A will may not prevent a former spouse from getting control over your assets for your children. A properly drafted trust could better protect the children and protect you in the event you become incapacitated.

V. FAMILY BUSINESS

1) **A.** *I own a family business and currently all I have is a will. Is that adequate?*

Q. Most wills will provide that assets go to either a spouse or equal shares to children or a combination of both. By merely drafting a will, you may be ignoring the tax issues connected with the business or who takes control of the business at death.

A properly drafted will may not be the best way to go if you own a family business.

A better way to go would be to structure a Family Business Succession Plan, which may involve a specially drafted living trust, other types of planning trusts, along with possibly a Buy / Sell Agreement. Failure to do so may prevent the business from continuing. As a matter of fact, most family businesses do not continue when the senior person dies, because improper planning

was done. This improper planning could end up in a huge financial drain to the family when the main owner dies.

IV. DISABLED BENEFICIARIES

1) **Q. *I have a disabled child and I am concerned about leaving them assets.***

A. Many parents face this same concern and there are special trusts that are called Supplemental Special Needs Trusts in which you can provide for disabled children or other beneficiaries and still allow them to qualify for state and government benefits. It is very important that this trust be drafted properly and be properly coordinated with you estate plan.

VII. LIFE INSURANCE

1) **Q. *What are the pitfalls in a beneficiary designation for life insurance?***

A. One of the biggest mistakes I see with life insurance is that parents will designate a minor child as a secondary beneficiary. This can cause all types of problems because insurance company will not issue a check to a beneficiary under the age of 18. Insurance companies will require you to go through a court proceeding to collect the insurance until the child reaches age 18 in most states and would therefore have control of those funds. A better planning technique with insurance is to designate some form of a trust as the beneficiary so that the insurance is protected for the minor children and will provide long-term protection even after the child reaches ages of maturity.

2) **Q. *Is life insurance subject to tax?***

A. It is generally not subject to income tax, but is subject to estate tax.

VIII. RETIREMENT ACCOUNTS

1) **Q. *What are the pitfalls of designating a beneficiary for an IRA, 401K, Annuity or other such retirement plans?***

A. All the money in these accounts very often is deferred income or is pre-taxed dollars. There are a number of tax selections, which can be examined when incorporating the beneficiary of these plans. Failure to really analyze these plan designations properly could result in substantial tax disadvantages to the family. It is very important that the attorney you work with not only have estate-planning skills, but also have a tax background to understand some of those tax selections.

2. Q. *I have a lot of joint properties, life insurance and retirement plans. Isn't it true that these plans are distributed at my death under my will?*

A. It is absolutely false as all of these programs are contractual in nature and will pass either to a surviving joint tenant or to the beneficiary of the plan. It is very important that the beneficiary of these programs be properly coordinated with your estate plan or could result in disaster for one's estate plan trust or will.

IX. INHERITANCE

1) Q. *I am going to be inheriting substantial sums of money from my parents. Will this affect my estate plan?*

A. It may very well have substantial tax effect of the assets you obtain. It is very important that your attorney discuss with you not only your current assets but also where it is estimated your assets will go in the next several years, along with any potential inheritance.

X. ESTATE PLANNING

1) Q. *I have minimum assets and do not believe I need estate planning.*

A. I often tell clients that those who need estate planning make up the white pages of a phone directory. Almost everybody has certain estate planning needs. Many people have the misconception that estate planning only deals with large numbers. It actually deals with a lot of personal needs such as a second marriage situation; minor children; disabled children; how to deal with a small business that is owned at death. Almost everybody needs some type of estate

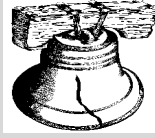
plan that may involve just setting up a will, but in many cases you will find that you have a lot more assets such as retirement, insurance and homes and it is very important that these assets be properly protected, either in the event of your disability or in the event of death. Proper draftsmanship can save a lot of heartache for the family in the future.

These are only a handful of questions that I have dealt with clients over the last 28 years. It is very important that you deal with the questions properly, regarding a Will, trust of Estate Plan. Richard Kuenster is willing to give you a free hour of his time to discuss any of these issues and any other issues that come to mind in his office. If you wish to take him up on this free offer, please call him at 630-238-0400.

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Richard A. Kuenster, J.D., LL.M.

Richard A. Kuenster is a tax and trust attorney and financial planning consultant, concentrating in tax, trust planning, business, estate planning and financial consulting for over 28 years. He received his B.A. from the University of Notre Dame (1973). His law degree (J.D. 1978) and his master's degree in tax law (LL.M. 1982) from The John Marshall Law School. He has been quoted in the following newspapers: *Wall Street Journal, Chicago Tribune, Chicago Sun-Times, and USA Today*. He has done extensive speaking in his area of expertise to attorneys, accountants and other professionals.

Prior Experience:

- ! Attorney with the Trust Counsel/Group of First National Bank of Chicago, 1978-1982.
- ! Estate Planning and Tax Attorney, Firm of Friedman & Koven, 1982-1984.
- ! Director of the Personal Financial Counseling Group of the National CPA Firm of Laventhol & Horvath, Chicago Office, 1984-1987.
- ! Director of the Personal Financial Services Group for the National Accounting Firm of Coopers & Lybrand, Chicago Office, 1987-1989.
- ! Senior Partner in Richard A. Kuenster & Associates, Ltd. 1989 to present.

Education:

- ! The John Marshall Law School: 1978 J.D. (*Juris Doctorate*), 1982: LL.M. (*Masters in Tax Law*)
- ! University of Notre Dame: 1973
- ! Quigley South Prep Seminary: 1969

Faculty Memberships:

- ! Northwestern University Professor: Certified Financial Planning Estate Planning Course
- ! Chicago, Illinois and American Bar Association (Sections: Trust Law, Estate Tax).

Continues . . .

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- ! Northwestern University: Professor, Certified Financial Planning Estate Planning Program
- ! Certified Continuing Professional Education Instructor for Illinois Accountants
- ! Chicago, Illinois and American Bar Association (Sections: Trust Law, Estate Tax).

