LAW 4 YOU

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Reviewing Your Legal Obligations

At the beginning of every year I try to touch base will all of my clients. For those of you who have not heard from me yet you will. Part of my service is to help you assess what has changed in your life since we last talked. I then determine if any of your life changes require any legal amendments or codicils.

Here are some life issues for you to consider.

Choosing Guardians. If you have minor children I want you to think about a few things.

- What is the age and vitality of your guardian?
- How many children to do you have now?
- How old are they?

These simple answers should impact your choice of guardian.

For example, my parents spent 5 days watching my two young children. And though my parents are young at heart and full of energy, my children exhausted them. My parents are devoted grandparents but because of their age and my children's energy level they should not be my first choice as guardians. In addition to the age of your guardian, you should consider how many children you have. You may have selected a particular guardian when you had one child. But if you now have a larger family you need to evaluate if your guardian can handle all of your children.

Document Conflict. Another important issue is to make sure your documents do not conflict with each other. For example, your Trust names John as the successor Trustee. Your Power of Attorney names Ann. Your Power of Attorney gives the Agent, Ann, the power to amend the trust and remove the Trustee. John and Ann have a conflict of interest. Ann can get rid of John and then amend the Trust to disinherit him. I know documents that I create do not conflict. But, the same cannot be said of others. This is important so make sure you review your parents' documents if you are the trustee.

Another example of document conflict occurs when your will gives a specific gift of money to one person and your trust splits all of the assets equally between several persons. There are times when the gift through the will may cause a lopsided allocation. If the trust funds are spent down it can cause one person to get a disproportionate amount.

Beneficiaries' Wealth. As your children age, their financial situation may change. Whereas at one time they might have needed to inherit money from you it may no longer be necessary. In fact it may increase the estate tax owed on their estate. If you leave your children your money and they have a lot of their own, this gift, no matter how generous, may increase the tax they owe. A better solution may be to use your Generation Skipping Exemption and leave money directly to your grandchildren. This exemption will keep your gift from being added to your children's estate and causing them to pay more tax. L4Y

IF IT SOUNDS TOO GOOD TO BE TRUE IT IS!

Beware, Beware, Beware. Each week I receive free seminar offers in the mail inviting me to learn about the benefits of tax schemes, investment schemes, and tax shelter schemes.

When you go to these seminars you hear all the ways Charitable Remainder Trusts, Private Annuity Trusts, or Family Limited Partnerships can save you money on capital gains and estate taxes.

In conjunction with a Charitable Remainder Trust you might be told to start your own family foundation. Generally, Family Foundations are touted by the seminar givers to be a great way to pay yourself for giving money to charity.

You may go to one seminar that says you must have a Family Limited Partnership or a Family Limited Liability Company. In these seminars the speaker encourages you to put all of your assets in these companies and then they promise you can take big discounts on the value of all of your assets, thus lowering the overall value of your taxable estate, and more importantly, you can still have all the income.

The problem is though all of these schemes sound great, the speaker never reveals the quagmire of complex rules, pitfalls, and penalties that accompany these schemes.

Here are some problems one might encounter.

- The IRS takes a dim view of a Family Company that holds a person's residence. They also do not like it if all of the members of the Company do not get compensated. Only use these companies if the company has a legitimate business purpose. The main purpose of the business may not be lowering the value of your taxable estate but actually running a business.
- The IRS has changed the tax laws on annuities so anyone dispelling the value of a Private Annuity is behind the times.
- Charitable Trusts need to ensure that the person responsible for the return is not promising more than he or she can deliver.

A Professor in Law School used to tell his students that if something sounded too good to be true than you should listen to your gut and not let your head talk you into it. L4Y

TAX TIME

By now many of you have heard that the IRS is increasing its audits this year. I've confirmed this rumor from several sources. The new Tax Commissioner is convinced that we are cheating on our taxes. As a result they are targeting Schedule C filers, Small Businesses, S-Corporations, and Self Employed individuals. Some of the areas they might be looking at are vehicle deductions, meals, home office and gifts,

Another important issue for anyone who is charitably minded, and who may have donated more than $250.00 to a charity this year, is that you need a receipt from that charity sent to you before April of this year.

Since 1994, the tax law has required a written receipt for every charitable contribution of $250 or more. Specifically, the donor must obtain from the donee organization "a contemporaneous written acknowledgment." A cancelled check is no longer sufficient. I myself will have to chase down a few receipts. The IRS's reasoning for the receipt is that if you are giving a donation to a hospital or to a school, the institution may not know what the check was for. You could be paying a bill. L4Y

DUTIES OF A TRUSTEE

One of the most frequently asked questions I get from my clients is, "What are the duties of a trustee?" This is an excellent question and the information is important to understand if you have a trust or are named in someone else's trust.

Unfortunately the answer is significantly longer and more complicated than the question. What follows is an abbreviated discussion of the duties of a trustee.

It is important to know that laws and regulations vary from state-to-state. The information here applies to states that have adopted the Uniform Trust Code. Among the states that have adopted this are California, District of Columbia, Maryland, and Virginia. These are the states I practice in.

A. Standard of Trust Management
In managing the trust property, you must use at least ordinary business ability. Your management will be judged in light of the circumstances existing at the time transactions occur. If you exceed your trustee powers, you may be held liable for loss or damage to the trust estate.

B. Source of Trustee Powers
It is important that you understand the rules under which you must administer the Credit Trust. These rules are derived from three sources: (1) the Declaration of Trust itself, (2) the statutory law that is listed in your State Code, and (3) case law created by the courts.

C. General Duties of Trustee
Your basic duties as trustee involve the collection, management, and investment of trust assets and the accumulation and distribution of income and principal pursuant to the Trust. Another important set of duties relates to tax matters, which are explained in detail later on in this memo.

It is a fundamental principal of trust law that you must be faithful to the interests of the Trust and its beneficiaries. As trustee, you occupy a position of trust and confidence and, therefore, you owe a duty of care to the beneficiaries. You have a duty to administer the Trust solely in the interest of the beneficiaries and to deal impartially with them. The legal term for this duty is called a fiduciary duty.

Once a Grantor dies, as Trustee, you have a basic duty to keep the beneficiaries reasonably informed of the trust and its administration. At a minimum, this duty requires you to notify the beneficiaries of the existence of the trust and their right to request information from you concerning your administration of the trust.

You have a duty to take reasonable steps to take and keep control of trust property and to preserve the trust property and make it productive. Productive means that it is making money either through interests, rent or appreciation. (For example, a violation of this principal would be if you sold an asset and just left the proceeds to sit in an escrow account for months.)

You must not commingle trust property with your own property. You cannot use trust property for your own profit or for any non-trust purpose. You must not engage in any transaction that will result in a conflict of interest between you and the Trust or a beneficiary. (For example, you could not purchase an asset from the Trust for less than its market value.) You also have a duty to take reasonable steps to enforce claims of the Trust and to defend actions brought against the Trust.

You must carry out all trustee activities personally. In other words, you may not delegate your responsibilities to others. For example, you cannot give someone a Power of Attorney to handle your trustee duties. Only a duly authorized trustee has the power to transact business on behalf of the trust. However, you may hire attorneys, accountants, investment advisors, and others to consult with you concerning your administration of the Trust, and you may pay such advisors from the assets of the trust. If you do not want to be the Trustee of the Trust you can also resign and allow the successor trustee to be the trustee or hire a professional trustee.

D. Accounting and Record-Keeping
State law requires that you provide all beneficiaries with certain information upon request and account to such beneficiaries if they demand an accounting. In addition, you have the affirmative duty to give a full accounting of all trust transactions, not less often than annually, or at the termination of the Trust, to all beneficiaries who are currently entitled to distributions of income or principal. This is especially hard for parents. If your trust called for a split after the death of the first spouse then your children are entitled to an accounting of the credit trust at least annually. If you are the trustee of a Credit Trust, you will only have to provide your children with an accounting of the Credit Trust.

E. Co-Trustees
Co-trustees are jointly responsible for managing the trust. It is not permitted for one trustee to force the other trustee out of the loop. That means Co-Trustees must cooperate. Each trustee is entitled to a complete copy of the estate plan and entitled to know what is happening. It is OK for one of the Co-Trustees to abdicate their trustee to the other. L4Y

CALIFORNIA OFFICE HOURS

I'll in California March 1 through March 5. If you would like to schedule an appointment to discuss any updates to your legal documents or know of any family or friends who have wanted an appointment, please call me as soon as possible at 714.527.7147

Rhonda Miller *has serviced hundreds of estate plans and business entity plans. She recognizes that developing estate plans and legal business structures involves highly sensitive materials, emotional decisions, and confidentiality. She takes the time to get to know her clients and their needs and she goes a step further. Rhonda makes house calls. Unlike traditional law practices where clients meet in intimidating and busy legal offices, Rhonda works with clients in their homes or remotely to provide them with a sense of ease and comfort. In this way she is better able to serve her clients' needs and recommend solutions that work for them.*

Your life and your business are unique. Your legal services should be too!

This newsletter is intended to be a guide about legal issues and it is not intended to be legal advice, legal representation, or advice that can be relied on to avoid any penalties that the Internal Revenue Service may assert because of a successful challenge to any position taken on a tax return. Due to the rapidly changing nature of the law, I make no warranties or guarantees of the accuracy or reliability of the information contained herein.

PROFESSIONAL AFFILIATIONS

Virginia State Bar
California State Bar
Northern Virginia Estate Planning Council
Fairfax County Bar Association
Orange County Bar Association
Soroptimist International
Canine Support Teams
Herndon Dulles Chamber of Commerce
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Schedule your California Office Appointment Today!
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