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### • One Man's Opinions – Winter 2013-14

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ESTATE PLANNING THOUGHTS

HAPPY NEW YEAR! I wish all my readers a prosperous and successful New Year. 2013 turned out to be a terrific year for the stock market. While I do not believe 2014 will come close to matching it, neither do I think investors have much to fear. The economy is improving, although at a disappointing rate. Stock prices compared to corporate earnings are still reasonable. On balance the market still looks attractive.

I am aware that the majority, probably nearly all of my readers have wills, and most of these have trusts, retirement investment accounts, powers of attorney, etc.

But several times in recent weeks people have asked me for guidance in their estate plans. Not the technicalities, their estate attorneys are well versed in these. Their advice and services are necessary, even required. No, my inquirers are asking for direction on decisions they need to make prior to giving instructions to their attorneys to go ahead with the appropriate paper work. The multiple requests for my opinions on these initial questions triggered this quarterly newsletter, which allows me more room for this topic than a single blog would.

“How should I treat my heirs and when?” These were the universal questions, which is not really a legal one. My initial advice is always “above all, don’t surprise them regarding their inheritance or bequests.” It is best to prepare them in advance as to any riches that might fall into their laps because of your demise, if for no other reason than that you will no longer be around to answer questions like “why?” or, perhaps, “why not?” Without clear communication in advance, a sudden windfall might just as suddenly get spent or wasted.

During my career I have seen recipients of inheritances who were not at all prepared for this sudden influx of wealth. I even had an unsophisticated \$6 million lottery winner seek my help one time. I well remember our first visit when I told him he only had to do one thing right away! He must enact a new (and much more sophisticated) estate plan. He was enormously relieved, it showed on his face. Everybody else he had talked to bewildered him with their urgent loan requests, gifts, investment advice, and offers to help him spend his new wealth. He was a tradesman and winning the lottery overwhelmed him.

Independent third party guidance and advice is invaluable, followed by action; communicating with heirs as to what and why you have decided to disperse your material wealth as you have. Indeed, this is also be an excellent time to focus on your “legacy;” what you believe your family stands for and what you believe should be addressing in the future. Keeping your estate plan and its appropriate documents up to date is essential too.

Think through the plan as you develop it and later when reviewing it. You should identify the implications of your plan. Transferring wealth has emotional as well as financial outcomes. Optimizing your strategy around a stated mission or philosophy will usually increase the chances that the outcomes you intended and prefer will be achieved.

Money that is passed without purpose and proper preparedness causes great harm in many instances. But it does not have to be that way. One must consider the impact of their decisions. Are there some lessons, family values, or traditions that you might wish to reinforce or pass on to your heirs? What habits or beliefs have you found useful and beneficial in accumulating your wealth? How can you best motivate them to adopt these helpful traits or behaviors?

Above all, communicate your plan to your heirs. You should share your decisions and the thinking behind them in a structured and transparent way, so that everyone is clear on how your estate will be distributed and why.

The World War II generation was indeed, in my mind, the “Greatest Generation” we have ever known. But they had one characteristic which permeated nearly every family of means. Most of them NEVER talked about their financial affairs! Not even, in many cases, with their spouses. They are almost all gone now of course, but throughout my career I have begged many of them to open up and share with their loved ones exactly what assets they had, what liabilities, and what wishes and plans they had for their heirs. For the most part I failed.

Here are some mistakes I see often. Most people believe they have to treat all their children equally, which is really not true. Parents and grandparents have the discretion to determine the needs of their various children, grandchildren, and other heirs, relatives, and even friends, and to take them into consideration in making bequests at death as well as gifts during their lives. The size of the estate is important of course. A large bequest to an heir of modest means from a larger pool of assets can be relatively inconsequential to the giver. The opposite is true. When my mother updated her will twenty years ago, she excluded two of us, my youngest brother and me, in favor of our children, her grandchildren. It was a modest estate, but their share of it made a difference to the lives of several of her grandchildren. (Pat, my youngest brother, followed my path and joined the investment fraternity in his early 20s, as I did. In a word, we did not need Mom’s money.) Often the circumstances of your various heirs should be carefully considered when determining how to split up your estate.

Other considerations are the stability of any marriages, the strength or weakness of ties to the heirs, their personal wishes, and their emotional maturity. Leaving money to a spendthrift can be destructive, not helpful. But above all do not leave hurtful surprises. All these cases should be discussed with the heir, or their parent, partner or responsible sibling, in detail. Your financial planner or attorney can help in these sessions. And, as necessary, this reasoning should be outlined in a private letter to the heir to be opened at your death. A letter to all your heirs, “to be opened at my death,” in part explaining the decisions you have made, is a good idea. Be sure to include your feelings toward your family, love, respect, admiration, encouragement, and forgiveness.

There are situations where a child or grandchild is mentally disabled or challenged. They are called “special needs children.” Over the years on my lecture cruises I have interviewed hundreds of families. In every case that I have come across families with a “special needs” child, the siblings involved have informed the parents to “leave mine” to the special needs child. Usually with the comment, “they bring so much love to the family.” I count this a strong plus to the overall strength of the family.

These situations call for extra handling in the estate. In order to avoid contaminating their financial position, care must be taken not to cancel any governmental aid which this person may have coming to them under the law. In these cases “Special Needs Trusts,” need to be drawn up by an attorney who is expert in them and in the state of domicile in which this heir lives.

One thing an heir must do early on is to answer the question “do I need to have a will at all?” In nearly all cases the answer is yes!” Only young unmarried adults with no material assets to speak of and with no children or spouses do not need a will. They too though, should be aware that we all have a will, whether we know it or not. In my lectures on estate planning I always point out that our state of residence has a will for us

If we die “intestate;” (which means “without a will”) state law in the state of residence determines how the estate will be handled and distributed. This is almost never the best possible way things should be handled. It nearly always is more expensive and complicated than would have been the preferences of the decedent.

Some years ago we had two such deaths in my own family. The father of two of my grandchildren died suddenly at age 47. There was no will, despite the fact that he had free legal service as a benefit from his employer. He and my daughter had divorced some years before. It was necessary for an attorney to go to the courts to get an executor appointed. The court also determined that his two children were, under Indiana law, the sole heirs to his estate, 50/50. They were 19 and 21 years old, with little or no financial knowledge. The estate included his retirement funds, cash, cars, and a modest home on White River here in Indianapolis. The lot alone was worth quite a bit more than the home on it. Legal fees and expenses chewed up tens of thousands of dollars and several years of time. The heirs had almost no financial experience at that point in their lives.

Less than two years later this grandson was killed in a motorcycle accident. At age 21 he too had no will. Nor did he have much cash, as he had spent most of his liquid inheritance. Again legal bills and fees caused more time and expense. Complicating things was the division of the home, as his mother wound up with 25% of a home which was of little value to her as she had her own home. Unraveling all of this caused angst and friction between her and her daughter.

All of this delay and expense could have been avoided if my grandson and his father each had very simple inexpensive wills. These can even be purchased on line for a few hundred dollars. (I always advise that a local lawyer look these over for any errors or omissions in that particular state.) My point here is that both these men believed they did not “need” a will, as they did not plan to die at 47 and 21. As a matter of fact few of us have any warning of pending death. “We know not the hour or the day;” as scripture says.

In addition to financial matters, planning ones estate includes such other items as a “Health Care power of attorney; a financial power of attorney; custody and care of any children involved, as well as financial arrangements for them; and funeral wishes and arrangements as well. Depending on the complexity of the estate, trusts may be appropriate, either during life or at death.

Attention to these matters as a new years starts is an excellent time to be sure your wishes will be carried out when you too reach the end. I always point out to my audiences “there is a 100% chance you are going to die!” Please take care of it, and each other.

I will be at sea for most of January. The timing of my blogs may well be erratic for a few weeks.

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