

Great Quotes: How poor are they that have not patience!

Othello (II, iii, 376-379)

William Shakespeare

Another episode of laughs...

DUMB: Wanting to steal a cake.

DUMBER: Stealing a cake.

DUMBERER: Stealing a cake and leaving a trail of crumbs for police to find back to your hideout where police find your sorry face covered in icing.

When legislatures have big problems on their hands, what do they do?

- A. Buckle down and get to work
- B. Put their heads on their desks and hope the problem will go away
- C. Flirt with a senate staffer
- D. Pass dumb laws instead to make it look like they did something
- E. All of the above

Matthew P. Dukes, 26,

sentenced to 30 days in jail in 1989 following his sixth drunken-driving conviction, tried for 15 months (through December 1990) to get into jail in Ravenna, Ohio, but each time was turned away because the jail was full. In December, Dukes filed a lawsuit in federal court claiming that his constitutional rights are being violated by the jail's refusal to admit him.

An 800 Lbs. Production



Private Foundations

Many of our clients are looking for ways to promote a social cause, save taxes and help their family at the same time. A private foundation can be the best way to accomplish all these objectives, but in the past their complexity and cost has relegated their use to the very wealthy. It simply did not make sense to start a foundation for less than \$1 million. We have recently found a company, however, that can administer foundations effectively with as little as \$100,000.

What is a private foundation?

Technically, it is a not-for-profit entity that can be controlled by a person, family or business. It is organized exclusively for charitable, educational, religious, scientific or literary purposes under Section 501(c)(3) of the Internal Revenue Code. The foundation must be officially recognized by the IRS in order for contributions to it to be tax deductible.

In practice, a private foundation is a unique planned-giving vehicle that fosters family involvement, provides significant control over assets and giving, and allows donors to receive an immediate tax deduction for charitable donations that are made in the future.

What are the benefits of a private foundation?

Family legacy. A private foundation establishes a legacy of giving that can carry the family name, support causes that are important to you, and promote charitable activities into the future.

Control. Private foundations provide the greatest control of any planned giving vehicle. You decide which charities to support and how the assets are invested. You also have great latitude as to the types of assets you can donate to the foundation.

Family involvement. A private foundation enables you to involve the family and philanthropy and pass values on to future generations.

Current tax deduction for future grants. You can take an immediate tax deduction for contributed assets, even if the foundation does not make charitable grants until a later date. You are also able to remove taxable assets from your estate, without incurring capital gains.

If you are interested in learning more about a private foundation, we would be happy to discuss this further with you.

Cohen and Burnett, PC

Legacy Analytics, LLC

Winter 2007

Estate and Financial Planning Update



Founding Partner

I. Mark Cohen
JD, LL.M. & CFP™

I am writing this quarter's column in a conference room, in between sessions at the Heckerling conference on advanced estate planning in Orlando, Florida. This is the first time both Wes and I have taken an entire week out of our practice to learn the latest news and techniques of advanced estate planning. As a special treat, Kathy is planning on flying down here this weekend, and we will spend a couple of days together vacationing here.

Back at home, little has changed from last quarter's newsletter. The kids are both back in school, and are already missing their winter break.

I recently published an article entitled "Appreciating Individual Trustees" and the December issue of the Trusts & Estates magazine. This article discusses the four jobs a trustee must do, and provides guidance for choosing between individual family members as trustee or using a professional. If you would like to see a copy of this article, please call us and we will be happy to send you one. I am working on another article for this magazine, also relating to trustees, due out in their March issue.

In case you are wondering, Wes and I have chosen our next recreational activities. I am going to run "Bay to Breakers" on the third Sunday in May. Wes has run this several times already, and it conflicts with his daughter's graduation, so he is going to do a triathlon this summer instead.

What Questions Should You Ask Before Accepting or Declining Trusteeship?

This article is a highly condensed version of an article I am writing for the March 2007 edition of Trusts & Estates Magazine.

You have just learned that you have been appointed as a trustee, and you are considering whether you should accept. What do you need to know before agreeing to accept the position? Here are the questions you should ask.

Is this the right job for you?

Being a trustee is not an ego trip. It is likely more a burden than a benefit. The job requires a considerable amount of time and energy, diplomacy, record keeping, caring for and responding to the beneficiaries, and managing the trust assets. And, if you are serving on behalf of family or friends, the job typically does not pay well. Is this a good time and place in your life to serve as trustee? If your job requires frequent travel, or you live far away, or your need to care for children and/or parents are putting large demands on you; being a trustee may not be the right thing for you now. Parents often appoint their children as trustee without giving much thought to the child's needs. I have had trustees tell me that the demand of trusteeship has cost them their jobs. If you are concerned about this but still feel the need to accept the position, consider hiring a professional trustee to serve as your agent.

What is the Purpose of the Trust

Every trust has a purpose, but not every trust is capable of reaching its goals. Sometimes the assets in the trust are insufficient to accomplish its purpose. Sometimes the assets are sufficient, but the trust limits your investment options so that you cannot make ends meet. *Continued on page two*

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We found a clone who is better and smarter than me to join us, Commander George Reilly, JAGC, USN, Ret. formerly the Navy's Tax Counsel. He is admitted to the practice of law in RI and DC and pending admission for Virginia. He reported on board in early December and is focusing first on learning the law firm business. His wife, Jennifer, and two children, Grace and Andrew, were able to make our holiday party.

My family's big news was Barb and I moved to our new residence two miles from the office in Falls Church. Love that commute! We had a yellow ribbon cutting ceremony for the new house on Friday, October 13 with closing handled on site by the closing attorney! We had finished moving in by Monday, October 16 (after 20+ moves it goes fast). I found that a very, very lucky day and won an ice cream sundae on a bet with my mother as the house was finished over a month ahead of schedule. (Note, I then lost another ice cream sundae bet with my wife on another matter!)

My wife and I had 14 for Thanksgiving, 17 for Christmas and three parties over 20 in the first 90 days including the first settler's party for the first ten families in this new subdivision and Barb's school faculty party.

In other news, my son David and I are signed up for a triathlon in June in Norfolk on a nice flat course. We are lucky that his UVA Law School graduation and our daughter, Jennifer's, Masters graduation from JMU are two weeks apart and in between is National Math Counts competition weekend, where Barb will probably be again with the Virginia team if they excel again, as expected.

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Let's say that a trust is established for the purpose of providing primary support for a beneficiary for life, which is expected to last for 30 years, and is funded with assets of sufficient value to meet that purpose. But the assets are not producing enough income and the trust prohibits their sale. Before accepting trusteeship, you will want to make sure that the trust can be reformed so that it can meet its purpose. Virginia law provides several methods and grounds for reforming a trust.

How Complex is the Trust

Can you understand and follow all the terms of the trust? Some trusts are of relatively straightforward, while others, such as charitable trusts, can be dangerously tricky and complex. If you do not possess the skills to manage all the aspects of such complex trust yourself, are you willing to get and follow good advice? Does the trust, or applicable law, permit delegation of your duties to competent advisors? Virginia does.

Who Else is Involved; Are There Co-Trustees?

Are you going to serve alone or do you have to work with one or more co-trustees? If you are working with co-trustees a number of questions will arise:

Is unanimity required, majority rules, or can the trustees act independently? What happens in the event of a disagreement between the trustees? What if there is a vacancy? What if a trustee is unable to perform, or refuses to act? Can you delegate any of your duties to a co-trustee or an outside professional?

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A New Friend and Face

Legacy Analytics, LLC and Cohen and Burnett, P.C. welcomes to the staff a new key person:

George Reilly, JD, LLM, CFP™



Commander George Reilly, JAGC, USN, Ret. formerly the Navy's Tax Counsel, JD, and Master of Law in Tax and a Certified Financial Planner™.

Lawyer Jokes

A housewife, a CPA and a lawyer were asked "How much is 2+2?" The housewife replies: "Four!". The accountant says: "I think it's either 3 or 4. Let me run those figures through my spreadsheet one more time." The lawyer pulls the drapes, dims the lights and asks in a hushed voice, "**How much do you want it to be?**"

The defendant who pleads their own case has a fool for a client, but at least there will be no problem with fee-splitting.

Lawyers are the only profession where the more there are, the more are needed!

God decided to take the devil to court and settle their differences once and for all. When Satan heard this, he laughed and said, "And where do you think you're going to find a lawyer?"

There is no better way to exercise the imagination than the study of the law.

A small town that cannot support one lawyer can always support two.

Between grand theft and a legal fee, there only stands a law degree.

It was so cold last winter that I saw a lawyer with his hands in his own pockets.

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Are you taking over from a previous trustee in an existing trust

If you are becoming a successor trustee, what responsibility do you have to review the actions of the previous trustee? Are you prepared to sue the prior trustee if appropriate? Will the beneficiaries be willing to take on these claims instead? If so, be sure to get court approval for that agreement.

What Is Your Exit Strategy.

When you decide you have had enough, how hard will it be for you to resign as trustee? If there is no provision in the trust, Virginia provides that a trustee may resign upon 30 days notice to the qualified beneficiaries and all cotrustees. You will continue to be responsible, however, until all the trust property has been delivered to the successor trustee or other person entitled to it.

What Are The Trust Assets.

What assets are in the trust, and what power do you have as trustee to adjust those assets in order to meet your responsibilities? Are you expected to manage a business, or a real estate portfolio? Do you possess the skills and interests necessary to manage these assets? Do the trust assets comprise largely of concentrated holdings? If so, are you required to retain the concentrated holdings, or are you permitted to diversify? In any event, can you formulate an investment plan that is reasonably calculated to accomplish the purpose of the trust? If the answer to any of these questions is "no" then I would suggest either getting competent help or declining trusteeship.

Who Are The Beneficiaries

Before accepting the position of trustee, think long and hard about the beneficiaries. Are they nice, reasonable people? Or are they angry, litigious cusses? If so, run for the hills! It is not unusual for one sibling to have trouble getting along with another sibling. If, for example, the thought of talking to your sister makes you nauseous, and she is one of the beneficiaries, consider declining trusteeship. Are you also a beneficiary? If so, can you resolve any conflicts of interest and remain impartial to all the beneficiaries, including yourself?

What About Other Helpers

Do you have access to good help? Will the trust be able to pay for good helpers? Many of the issues in administering a trust can be handled readily with help from knowledgeable attorneys, accountants, and financial planners. Unless you have ready access to such helpers, I would not suggest accepting trusteeship.

Repeal of Virginia Estate Tax

In August, Virginia repealed the estate tax effective for those persons dying after July 1, 2007.