

Law Office of David C. Anderson
404 Camino del Rio South, Suite 605
San Diego, CA 92108
619-220-8688

May 5, 2008

Via email

RE: "STUFF"

Dear Clients & Friends:

Tax day is past and fishing season is just around the corner, so welcome again to a letter about some intriguing aspects of my estate planning world.

First, My Little Estate Tax Update: Interesting things are going on as Congress tries to remedy the estate tax roller coaster which is set up for 2009-2010-2011, but whether a bill will make it to the President's desk before November is iffy. A bi-partisan bill was presented in the House which I discussed in my letter of August 29, 2007. A couple months ago the Senate voted 99-1, to extend the \$3.5 MM exclusion and 45% tax rate beyond 2009 (some comfort to those like me who fear a return of the \$1 MM exclusion in 2011). Further hearings on the estate tax are scheduled; however, this is an election year, and I don't think anyone will be shocked if the estate tax gets the ol' big fish refusal. Since there has been no conclusive action in Congress, I would like to turn my attention to some other fish I would like to fry.

Let's talk about "Stuff". What's Stuff? Stuff is all the personal things you have; you know, like fishing rods, reels, flies, lures, mounted fish, boats, vests, hats, and sunglasses. I think it is time to talk about how Stuff gets distributed to your children. A lot of Stuff doesn't have a high monetary value, but that makes it is easy to underestimate the (emotional) value your children may put on your Stuff. Following this line, directing your Stuff to be "divided equally between my children" can pose a danger for some families, since I know of deceased parents who were unaware that their children were prepared to fight to the death to get the Stuff they wanted.

I have administered a couple trusts recently (fortunately planned by others) which have left me highly sensitized to the havoc that beneficiary fights over Stuff can create. The administrative disruption is bad, but the damage to family relations is worse. I could write about the battles between siblings using sentimental Stuff as a bludgeon in a psychological effort to right past wrongs (either actual or imagined), but I think you probably already know where of I speak.

While many parents are insightful about individual children, they are often unrestrained optimists when they imagine how their kids will interact when Mom and Dad are no longer there. When there is no designated recipient for Stuff, amazing recollections can arise. "Mom promised me I would get the painting over the sofa", says one. "No, Mom told me I would get that," says another. Then, they are off to the races, and the resulting conflict can rupture family relations.

I work hard to avoid setting the stage for “Family Feud”, but in the area of Stuff, I am convinced there is room for improvement. Failing to pay careful attention to the mundane task of distributing Stuff can damage an otherwise well crafted estate plan, but getting clients to actually go through the process of dividing Stuff is more difficult than it sounds. Typically, clients have not given much thought to the division of their Stuff at their initial meeting. So, I usually suggest that they may want to make individual distributions, and we agree that they will think about it further. Most end up saying that their kids are perfectly capable of dividing the Stuff equally. Such a belief proves to be accurate for a majority of clients, but what about the 20-25% of cases in which sibling arguments arise? And, importantly, can we tell which cases they will be ahead of time? If you stop and think about it, Stuff is inherently unequal, so perhaps some thoughtful planning will avoid the rocks and shoals that could damage your family relations.

I have a couple of suggestions. For important Stuff (particularly family heirlooms and expensive items) it is often a good idea to talk with your children and hear what each would like to receive. It is also important for each child to know your thoughts about preserving Stuff with strong family ties. Circulating a list among the beneficiaries and receiving feedback prior to inclusion in your trust may allow for some skillful designations which avoid conflicts later on. If high value Stuff cannot be balanced among multiple beneficiaries, then balancing with other assets should be considered.

If you don't want to go through the process of allocating lots of Stuff to equal beneficiaries, it may be a good idea to require a fair methodology be followed for the selection of Stuff, rather than simply stating “my personal property shall be distributed equally between my children”. Fortunately, there are several ways to insure that each child receives a fair opportunity to select Stuff. One is to draw numbered straws and choose in a defined rotation. For example, three children would choose items by the order, 1-2-3-3-2-1-1-2-3-3, etc., which compensates for the luck of the draw. Or an auction can be held for some individual items, and each beneficiary can decide how much he or she is willing to bid on any item. Then, to even up values, cash would be transferred to those to take to less value from the accounts of those who take more. There are several additional ways to direct a fair distribution, so the effect is that clients can choose the method that they feel works best for their family.

If we keep first things first and address the personal issues that are present in every family, we will have increased the probability of good results, and we hope the kids will still go fishing with each other even after Mom and Dad are gone.

Sincerely,
David C. Anderson