

THE BUXTON BULLETIN

Published From Time To Time For The Benefit Of Our Clients and Friends

By **JOSEPH T. BUXTON III, PC T/A TRUSTBUILDERS LAW GROUP**

A Professional Law Corporation, Urbanna . Yorktown, VA

FALL 2011

A Letter To Clients: Educating Mary **By: Joseph T. "Chip" Buxton III, Esq.**

An estate lawyer's number one job is to educate people as to what they need to do for their family before disability or death. It is a tough job and I have always thought it is too bad our schools do not teach children in high school more about economics and how to protect themselves in life.

Sadly, many people go through life never realizing they need to protect their family before they pass away...prepare not only for retirement, possible illness and/or long term care, but eventually passing on assets to the next generation.

You may agree my job teaching people about estate planning is tough but nothing could have been tougher than talking my own wife, Mary, into doing her estate plan.

"What?!! What!!!!?" Mary said over breakfast when I suggested it was time. After all, she wasn't getting any younger. (I was foolish enough to add that last bit...a lawyer can make a mistake.)

Mary did exactly what I might have known she would do. She dug in. Out came that defiant Ohio chin and with two blazing brown eyes aimed right at me she announced... "I don't need an estate plan!!!"

"Why would you say that? Everyone needs, at least, a will." I responded.

"Well, I'm not going to die!!!" she said in a huff. That was that. No sense in arguing with Mary.

Mary's denial was normal. Few people want to think they need a will and when you get right down to it, even fewer can even imagine they will die, at least any time soon. Estate planning is rather like going to the dentist, it is easy to put off...until a really bad tooth ache...and sometimes, by then, it is too late to save the tooth!

My next approach with Mary was to mention a dynasty trust. "What's that??" She asked with only a modicum of interest.

"Well" I said cagily sensing my opportunity, "a dynasty trust can insure that your assets go to our children and not to the next Mrs. Buxton." Well, that got her attention...it never occurred to her that if she did happen to pass away, well, just maybe, of course, probably not, but in case it happened, and if I were ever so foolish as to even consider marrying another woman even after my perfectly wonderful 48 years with Mary...well, wouldn't she like to know her estate would pass on to her children and not to my new wife?

That did it. The image of the next Mrs. Buxton appeared to Mary like an apparition right out of Shakespeare. She was in my office the next day demanding not only a dynasty trust to make certain our children receive her possessions, but also a pour-over will, power of attorney, and medical directive.

It took some convincing to get Mary to see the wisdom in such action. Now she has protected not only herself from the next Mrs.

Buxton that might dare try to fill her shoes but also from a host of other estate risks with a full arsenal of legal tools we will need as we travel down the road.

I even added extra protection that Mary really loves her dynasty trust...the "poison pill." This is a special clause that provides if I ever remarry...my next wife must sign a pre-nuptial agreement that will prevent her from making any claim on our assets. If she will not sign such an arrangement, Mary's trust automatically removes me as beneficiary and trustee and our children take over, which, incidentally, keeps going for their lifetimes so their spouses can't break into it in case they move on. That is the value of the dynasty trust. It gives Mary the power to protect her assets even from the grave.

If your parents, spouse or children are reluctant to talk about doing an estate plan...just talk about who might end up with what they have worked so hard to build...a second (or third) spouse, a wayward son or daughter in law, an estranged sibling, an undeserving creditor or even Uncle Sam who always has his hand out for a contribution.

Talk to me soon if you haven't already done so about updating your trust. Ask about a dynasty trust and let me show you how to improve your plan to protect your family for generations to come. In the meantime, be well, count your blessings and enjoy the crisp cool weather and the falling autumn leaves. - Chip

Chip's Tips...

By: Joseph T. "Chip" Buxton III, Esq.

Continued on page 2

Virtually every estate planning client that comes through my door signs an advanced medical directive (AMD). Exactly what is this document and why should everyone make sure they have such a document?

As we age we often encounter a variety of serious health conditions such as stroke, dementia, and disease. If we are unable to make informed decisions regarding our treatment someone needs to be authorized to make decisions for us otherwise a court will appoint a legal guardian to make those decisions.

An AMD can eliminate the need for court involvement and can dictate how you want to be treated if there is no possibility of your recovery.

We need to think ahead and plan to protect ourselves and our families from slipping into a situation where we are hospitalized, unable to make decisions, perhaps attached to tubes and intravenous feeding and on pain drugs and helpless. We need to allow our loved ones along with our trusted doctors to "pull the plug" when it is in our best interest to pass away peacefully. This part of an AMD is commonly called a "living will" and upon admission to a hospital they will inquire if you have one.

No one likes to think about such times, but my job as an elder law attorney is to urge you and your family to think of these matters now...while you are well.



Inside this issue:

Chip's Tips (continued from page 1)	2
Trust as an IRA Beneficiary	2
Congratulations to Wakefield Buxton	2
Welcome To Our Firm Victoria Cherniske	2
Words to the Wise About Marriage	3
From Mary's Desk...	3
In Memoriam	4
Holiday Food Drive	4
Client Information Corner	4

Our advanced medical directives gives your loved ones the right to make decisions for you, to transfer you to whatever health care facility that could treat and care for you, to employ and discharge any of the healthcare providers, to have full access to medical records, to act as your agent and make decisions on your behalf even if you cannot speak.

They even come with an added benefit. Upon signing the AMD's you can be immediately registered with Docubank, a company that offers your healthcare providers world-wide immediate 24 hour access to your AMD 365 days a year.

With a plastic Emergency Medical ID card clients do not have to worry about where to keep such records and whether they have them on their person whenever health situations may dictate immediate access.

Another tip to readers who may already have a medical directive on hand. The Commonwealth has recently changed the law applying to AMD's. You can now give your agent authority to deal with mental incapacity and dementia. It would be wise to have your attorney look over your existing directive to make any changes that may be needed to update it. Life is short. Make plans while you can.

Make sure each member in your family has a will or trust, power of attorney, and medical directive on hand. These are basic tools each person needs for the journey we make in life. Time is passing. None of us is getting any younger. My best advice is...don't wait to sign these necessary documents until it's too late to pick up a pen.

One last note, if you are enrolled in our Docubank system, you need to keep your medication list up-to-date. You can do this by sending Docubank an e-mail with the changes in the prescription, or by sending a new medication list to Docubank. All other information can be made by a phone call directly to Docubank.

Welcome To Our Firm Victoria Cherniske!!!

WELCOME

TrustBuilders Law Group is proud to announce the addition of a very important member to our staff...Victoria Cherniske from Cardinal, Virginia

who has accepted a position at our front desk in Urbanna. She comes to us not only with many personable qualities but...would you believe this...she has served for over 20 years as a Probate Judge in Connecticut. Needless to say, never have we seen a member of the staff learn a new job as quickly as did Victoria!

When Victoria is not at the office helping us, she is bound to be with her husband sailing on the Chesapeake Bay, if not on a horse!

We are so happy to have her! Be sure to greet her the next time you come into our Urbanna office.



Trust as an IRA Beneficiary

By: Joseph T. Buxton III, Esq.

For a variety of reasons, clients will often name their revocable living trust as the beneficiary on an individual retirement account, 401(k), thrift plan, or other qualified retirement arrangement. When a trust is named a beneficiary, the language in the trust has to be carefully drafted to get full advantage of the benefits of the trust for the beneficiaries of the trust, particularly when the client wishes the trustee to have full discretion on whether to accumulate the distributions from the IRA or to pay them out for the benefit of the beneficiary.

We have recently reviewed the language of our revocable living trust and made some substantial changes to the language to clarify any issues that might arise when the trust is made the beneficiary of the retirement account.

If you have named the trust as a beneficiary or contingent beneficiary on your retirement plans, we strongly encourage you to come in for your trust review. We will review your trust language and ensure that the IRA clause is sufficiently detailed to address your goals. In addition we want to review your Retirement Plan beneficiary designation document to make certain that it properly identifies the trust and the trust beneficiaries as beneficiaries of the IRA.

CONGRATULATIONS TO GEORGE PATTERSON WAKEFIELD BUXTON!!



CONGRATULATIONS!

Mr. and Mrs. Joseph T. Buxton III and the staff of TrustBuilders Law Group would like to extend their congratulations to George Patterson Wakefield Buxton for passing the Virginia State Bar effective October 14, 2011. Wakefield will be formally admitted to the Virginia Bar during an admission ceremony to be held on October 31, 2011. We have invited him to join the firm.

WAY TO GO WAKE! We are all so very proud of you.

Recently, I have met with several clients who are legally married, but are trying to make plans to disinherit their spouses in their estate plans. This unfortunate scenario almost always occurs with secondary marriages in which one spouse wishes to leave all of their assets to their surviving children from prior relationships.

Well, news flash, folks: if you are still legally married, *there is no way to disinherit your spouse in Virginia!*

Now, don't get me wrong here—I am not down on marriage in general; I just recently got engaged myself and plan to be married next year. This is about properly planning for secondary marriages ahead of time, and how to gracefully exit from a marriage without wrecking an estate plan.

In Virginia, regardless of whether or not your Will provides for your surviving spouse, the survivor has a right to claim an "elective share" of your "augmented estate," as well as claim several "allowances" to increase that share (this is commonly

referred to as "taking against the Will"). The result is that a surviving spouse can end up with a little more than one-third of your total estate, regardless of what you may intend. As you may have guessed, this can result in significant tension between a surviving spouse and children from a prior marriage. So, how do we avoid this mess? Two major recommendations:

1. **Prenup.** If you are getting remarried, and you have a family from a prior marriage for whom you intend to provide, get a premarital agreement. This can be a headache of a discussion with your future spouse, to be sure, but the agreement will contain provisions stating that each spouse forever waives the right to take against your estate. This is, bar none, the best way to maintain that "what's mine is mine, what's yours is yours" separation of your finances and your estates. PLEASE NOTE, however, that a prenup *does not protect your assets if your spouse applies for Medicaid*, which is a topic for another day.

2. **Finish your divorce!** If you are separated from your spouse and do not intend to reconcile the relationship, take the plunge and get a divorce decree. This extinguishes the right to take an elective share the moment it's finalized. At the very least, get a legal separation agreement that defines your respective rights and duties to each other after the relationship ends. The simple act of *physically* separating from your spouse (living apart), does not provide any legal protection whatsoever. You *must* complete the process in order for the automatic protections to kick in.

Unfortunately, due to the nature of the law, marriage actually carries with it certain drawbacks that can sabotage an estate plan if you're not careful. If you are in a second (third, fourth, fifth) marriage, be sure to have an open and frank discussion with your spouse about your intentions, and be sure to let us know as we work together on your plan.

"From Mary's Desk..."

By: Mary Wakefield Buxton

Urbanna, VA - It's been six months now since I returned to help out at the law office after 20 years of retirement. What else should a 69 year old lady on the verge of her 7th decade on earth do with her life but go back to work???

Truth be told, though occasionally exhausted from my afternoon shift at the Urbanna office, I am having a lot of fun. Thanks to our caring and patient staff, I have mastered most of the hi-tech equipment by now, can actually locate a file (out of our 6000 plus archives) and, of course, have witnessed or notarized a zillion documents. But the best part of all of my work has been getting to know our clients.

Some of you I already knew...like Gloria Daniel and Adam Geron, both of whom I met years ago when I interviewed Chesapeake Corporation family for my book "Bringing in the Wood." Or friends from Richmond like Estelle and Auzzie Jackson, whom I already knew from many fun occasions at Fishing Bay Yacht Club. And I know most Middlesex and Gloucester County clients. What good times we have had seated in the lobby and catching up on all the news while we have waited for the Big Cheese to usher us into his inner sanctum.

Yet, in spite of all the fun and laughter, I

have seen some sad times too. One particularly tragic case was a gentleman who recently came to us after his father had slipped into a semi-coma state. "He has over a million dollars in his estate and he doesn't have a will," we were told.

Many times we can help family members when a loved one comes ill and has no will. We do this by having our client sign a power of attorney that gives a trusted member of the family the legal right to write an estate plan, sign documents, and make decisions for someone in declining health. But in this specific case it was too late. Within a week the father had passed away. The death was even sadder to me because the son was in our office that morning trying to arrange to add his name to a bank account so that he might have some access to cash to help defray his father's expenses when the phone rang and we heard the father had passed away. At that point, it was even too late to add the son's name to his father's bank account. So the young man was left with no immediate cash to pay bills.

Maybe you haven't experienced the time-consuming and often irritating court probate process but one thing I know is we don't have to leave that problem for our relatives to work through. We can make



plans by acting now and arrange to skip that unpleasant chore. Keep in mind when health emergencies strike, there is often very little time to take action, so act now.

After all I have personally seen and experienced this year, I am now even more a firm believer in estate planning. I may be a humorous author but you can be sure I intend to skip probate and am armed with every legal document I need to face the coming years. I hope you have done the same.

(Note: Speaking of authors, did you know Mary has written 11 books about life in Tidewater, Virginia? Her books can be ordered through the Southside Sentinel in Urbanna by going to www.ssentinel.com on the internet, hitting "community," then click on Mary's picture.)

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In Memoriam

We regret that we learned of the death of Sally A. Kingsley on July 9, 2011. Sally worked with our Urbanna office part-time for five years and did a terrific job handling much of our correspondence. While she worked with us, she also held a job with the Sentinel Newspaper.

She was a wonderful person, with a wonderful family who we grew to love. We will miss her dearly.

Holiday Food Drive

By: Sharon Lester, Office Manager

TrustBuilders Law Group will be collecting non-perishable food items to donate to the Peninsula Food Bank for the upcoming holiday season. Please bring a non perishable food item, or monetary donation, to your next appointment or, drop off your donation when you are in the area. Thank you for the support of hunger relief.



THANK YOU FOR THE SUPPORT OF HUNGER RELIEF AND HAPPY HOLIDAYS FROM THE TRUSTBUILDERS STAFF!

Client Information Corner

- TrustBuilders Law Group will be holding an estate planning seminar in the month of December. The date and location is as follows:
December 8, 2011 @ 11:30 am: Schlesinger's Restaurant in Port Warwick: 1106 William Styron Square S
Newport News, Virginia
- If you have a trust in place and are not currently receiving a reminder letter for your annual trust review, please contact our office so we can add you to that list. It is vital to visit with an attorney once a year to make sure that your trust is up to date with new laws that are continuously changing. There is no charge for your annual trust review, so do not wait!
- Our offices have several brochures available upon request: "Understanding Funding Your Trust," "Understanding the Duties and Responsibilities of a Successor Trustee," "Understanding Life Insurance Trusts," "Understanding Charitable Remainder Trusts" and the new information package on Virginia 529 College Savings Plans." Call us for a copy!
- Financial Planning Tip:** Reserve your free, no obligation personal wealth care review with our affiliate TrustBuilders Planning Group; 110 Grace Avenue Urbanna, Virginia 23175 (804) 758-8290.

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