

Guilty Thoughts at the Funeral Home

By Douglas G. Chalgian, CELA ©2017

Last Will and Testament of

VICTOR L. QUEST

I, VICTOR L. QUEST, a resident of the County of

State of Michigan, being of sound and disposing mi-
nory, do hereby make, publish and declare this to
my last will and testament, hereby revoking any other will
heretofore made by me.

SECTION ONE

I hereby direct that all funeral exp-
enses of administering my estate, and all est-
ate succession taxes which become du-
e upon as practicable aft-
er my death, shall be paid out of the
residue of my estate, and I hereby au-
thorize my executor to recover the same
from the insurance proceeds of my life in-
surance policy, and from any other source
to which I may be entitled, and I hereby au-
thorize my executor to execute any and all
papers necessary to carry out the above
provisions of this will.

Someone close to you died. You're nicely dressed and at the funeral home. All the talk is about condolences, sympathy and shared memories. It's not that you aren't engaged — not that you aren't sincerely saddened by the loss — but also in your mind are questions about who is going to inherit what, and more specifically, whether you are going to get anything.

Your first instinct is correct: Now is not the time. But don't feel guilty, and don't for one minute believe that you are the only one in the room who is thinking these thoughts. Far from it. As uncomfortable as they may feel, these thoughts are perfectly natural. So to help alleviate some of your immediate concerns, following are generalized answers to some of the questions that are likely circling in your head:

Is there a will?

It's likely that there is an estate plan of some sort. Most people who live a reasonably long life will have made some provisions for their assets to pass at their death. They may have a will, but it is equally possible that they have established an estate plan using a trust, or by making assets jointly owned, or by setting up beneficiary designations. In fact, in most cases, more than one of these tools, and/or other types of testamentary arrangements, are used.

Who is in charge?

With respect to assets that are controlled by a will, the person in charge is called the "personal representative" of the estate, or what is sometimes called "the executor." If the decedent's assets are controlled by a trust, the person in charge is the "trustee." Usually, that person (or persons, or institution) knows that they have this job ahead of time, and often the entire family has been made aware in advance who will be serving in that role.

Will there be a reading of the will?

Most lawyers who do this type of work will offer families the opportunity to gather together, go over the estate plan, and answer questions. But it's really up to the family — and the person in charge — whether that takes place.

Do I have a right to information?

There are two types of people who have a right to information. So-called "natural heirs" are entitled to information about

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"probate assets" (the assets that are disposed of under the terms of a will), as well as the beneficiaries named in the will. With respect to assets distributed by joint ownership, beneficiary designations, or by the terms of a trust, only those named beneficiaries are entitled to information about those assets.

How soon should I know something?

That depends on how things are set up. If there is a will, whoever has the will is required to provide it to the court soon after death. In addition, before the person who is nominated by the will to be the personal representative can do their job, they will have to send information about the will to all the people named as beneficiaries of the estate, as well as to all the natural heirs. Likewise, if there are assets in trust, in most cases Michigan law will require the trustee to notify the beneficiaries within several weeks of the death of the person who created the trust. Notice to beneficiaries of other types of arrangements, like beneficiary designations and joint ownership, will come to the beneficiary within a short period of time from the institutions that hold those assets.

How long does it take for things to be settled?

That really depends on what the will or trust provides, as well as the types of assets that are involved. Estates and trusts can sometimes be settled within a few months, but in more complicated situations, it could take years. And there are certainly estate plans, usually involving trusts, where the rights of beneficiaries can be delayed well into the future.

Are there tax consequences?

While there are all sorts of taxes involved in the process of

estate and trust settlement, generally speaking, inheritances are not taxable to the person who receives the inheritance.

What about sentimental items?

There is probably more mischief in the distribution of small items of insignificant value than with respect to any other part of the estate settlement process. People sometimes have an inclination to show up at the home of the deceased individual and help themselves, sometimes even before the funeral is over. This is a concern that the person in charge should be very attentive to. If personal items are distributed from the home, it should only be done with the participation of everyone who has an interest in those items, and only in accordance with the terms of the estate plan.

What if stuff is missing?

After people die, if it appears that things have been wrongly removed from the estate, either while the person was still living or shortly after they died, you're probably going to end up in court. This kind of thing goes on, and these types of cases are not uncommon.

What about things that were understood, but may not be written down in formal documents?

It is not uncommon for people to believe that the way an estate plan was written is different than what the decedent really intended. If it can be shown that there was another meaning to the document, or that everyone understood there was a different intention, courts can sometimes provide a fix. Likewise, if the decedent wrote things out but did so in a way that does not meet the technical requirements of a will or trust, courts can sometime give legal effect to those instruments as well.

What if things were changed when the person who died was sick?

Cases of undue influence, or cases where someone signed something when they were incompetent and unable to understand, are common. These cases can be brought to court and, if proven, the changes that were made by a vulnerable or incompetent person will be set aside.

Do I need a lawyer?

While the person in charge of settling an estate will usually retain an attorney to help with the process, in most cases, the people who inherit property don't need lawyers to get the information or the property they are entitled to. That said, there are certainly many cases in which people have legitimate concerns about what they are getting, whether all of the assets have been accounted for, and whether the documents being relied upon are valid. In those cases, it is often better to have a lawyer help get answers to those questions before accepting any part of the inheritance, so that they aren't prevented from raising their concerns later.

Conclusion

Inheritance is as much a part of death as graveyards and coffins. When someone close to you dies, you will have feelings of grief and loss, but it is perfectly normal for you to also have questions about the estate plan and what you should expect. In many families, those issues will be handled with transparency and cooperation. But in a significant percentage of cases, legitimate concerns may exist, and obtaining legal advice may be the only way to make sure that things are being done right.

ATTORNEY DOUGLAS G. CHALGIAN, *Chalgian & Tripp Law Offices*, is both certified in elder law by the National Elder Law Foundation and a Fellow with the American College of Trust and Estate Counsel. He has served as chair of both the Probate and Estate Planning and Elder Law and Disability sections of the State Bar.

Mr. Chalgian previously served on the Commission on Services to the Aging. He was one of about a dozen attorneys on the Michigan Trust Code Drafting Committee, and has been selected three times as one of the top 100 lawyers in Michigan by Super Lawyers Magazine. Mr. Chalgian writes and speaks regularly on the topics of estate planning, elder law, and probate court litigation.

