

Will and Estate Planning Questions

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The following is a list of Will and Estate Planning Questions which I give to clients who ask me to prepare their Wills. This list is intended as an introductory guide and does not cover all possible issues, but is intended to raise issues and alternatives that you should consider when preparing your Will and Estate Plan.

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I. Specific Bequests & Residuary Shares -- Who gets the Money & How is it split up?

1. To whom do you wish to leave your money or property, after your death? What amounts (\$) or percentage (%) do you want to give to each person?

a. You can give specific amounts (cash bequests) to specific individuals or organizations. For example, *I give:*

1. \$1,000 to Mary Smith; and
2. \$10,000 to the Church of St. Peter

b) You can also give a percentage of your estate to specific individuals. For example, *I give:*

1. 25% of my entire estate to Mary Smith;
2. 10% to the Church of St. Peter; and
3. All of my residuary estate to my children Peter, Paul & Mary, who should share equally.

The residuary Estate is the remaining portion of the Estate, that is not specifically devised to others in the Will.

c) You can make a combination of gifts of dollar amounts and percentages. For example, *I give:*

1. \$10,000 to my friend Martha Peters;
2. \$1,000 to Temple Beth Shalom; and
3. the balance of my residuary estate to be shared equally among my nephews and nieces (Peter, Paul & Mary).

d) You can give everything to one individual. For example, *I give:*

- I give my entire estate to my beloved husband/wife Lois.

Please put together a list of the NAMES and ADDRESSES of the persons or organizations to whom you wish to leave money or assets and the amount of money or the specific asset or the specific percentage you wish to leave to each person or organization.

2. If any beneficiary predeceases you, who gets their share?

a) Should it go to someone specific (their children [issue] or their siblings)?

b) Should it be split among all of your residuary beneficiaries (in equal shares)?

1. If my wife shall predecease me, her share shall go to our children, Peter, Paul and Mary, or their issue [*the children of Peter, Paul and Mary--my*

grandchildren], in equal shares, per stirpes [if any of my children predecease me, that child's children shall receive their parent's share].

- c) Should a bequest to a predeceased person be cancelled (lapse) and pass to your residuary Estate?

Please list all successor and alternative beneficiaries.

3. Do you want to leave specific assets to anyone?
- I give my paintings to my sister, Sara.
 - I give my jewelry to my daughter-in-law Mary.
 - I give my mother's diamond engagement ring to my granddaughter Sara.
 - I give my book/record collection to my friend Joseph.

Please list a schedule of your most important assets and to whom you wish each item to go.

4. If any money goes to a minor child, do you want to place any restrictions on the minor's access to the money? At what age should a minor receive the money?
- a) If the amount is under \$10,000, the money should be payable to the child's parents, and deposited in a Uniform Gift for Minors Act custodial account.
- b) If you are giving a significant amount of money (over \$20,000) to a minor child or grandchild under 21, their share can be paid into a **Testamentary Trust** created by your will, with the child's surviving parent, or uncle, or aunt, or trusted long term family friend, as **Trustee**. The Trustee should have the right to use the minor's money for the child's health, education and welfare and to pay for college. If you want to have any other uses or restrictions, please discuss them with me.
- c) When the child becomes 21 years of age, the child can receive 25% of the funds outright, and the balance at 25 years of age (or 30 or 35 years of age for very large estates). You can use any ages, formula or restrictions you wish to select. Should the child receive income only, or income and principal? Does the Trustee have any discretion?
- d) If the child dies before they turn 25, or before a full distribution is made to them, who should get their share? Their children? Their spouse? Their siblings? Your other children?
5. If you wish to leave a substantial amount of money to a friend or relative who does not know how to manage money, or has a drug or alcohol problem or tax problems, a **Spendthrift Trust** may be useful in preventing them from wasting the money and it would prevent their creditors from getting the money.
6. If the beneficiary is mentally or physically disabled or is receiving **Social Security, Disability** or **Medicaid** benefits, a **Testamentary Supplemental Needs Trust** can be

used to prevent the government from getting the money or reducing their disability or Medicaid benefits.

7. Should a step-child, or a child of a prior marriage, or an adopted child, or an out-of-wedlock child, or a half-brother, or half-sister, be treated any differently or the same as your other children or grandchildren?
8. If you or your child had an out-of-wedlock child, was there a Court Order of Filiation (Paternity Order)?
9. Do you want to **disinherit** a family member?
 - a) If you want to specifically disinherit a child or grandchild from a Will, you can do so, but it must be clearly stated in the Will.
 - b) You cannot disinherit a spouse under New York law, unless she consents to same via a premarital or postnuptial agreement.
10. **Charities & Churches** - Do you want to leave anything to a charity, church or religious organization?
 - a) Do you want the church or charity to use your money only for a specific purpose or should they be permitted to use it for any charitable purpose, i.e.:
 1. Feed the Hungry
 2. Provide for college scholarship
 3. Build or equip a room in a church or school, etc.
 - b) Should the bequest be with or without restrictions as to use? For example:
 1. Medical Research (by Dr. _____ or in the field of _____).
 - c) Do you want to give the money to the Charity's National office, or to their local New York Office?
 - d) Do you want a specific person in the Church or Charity to decide how to allocate the money? For a use as directed by Father Pete.

II. Estate Taxes Issues

Federal Estate taxes do not currently go into effect unless an Estate has a value in excess of \$5 million.

NYS Estate Tax kicks in when an Estate has a value in excess of \$1 million.

Any money passing to a surviving spouse is not subject to Estate tax. However, when the surviving spouse later dies, their Estate (which is now larger) would be subject to Estate tax if the value of the survivor's larger Estate was in excess of \$5 million dollars (Federal) or \$1 million dollars (NYS Tax).

The distribution choices listed on the prior pages **do not** take into consideration Federal and New York State Estate Tax issues. After the size of the projected estate is determined and the client's desires and initial Testamentary plan is determined, only then can effective estate tax planning be performed.

Estate taxes can be apportioned evenly against all bequests, or only against your residuary Estate depending upon the language in your Will.

- a) Some of the tools that can be used in Estate planning purposes to minimize the potential estate taxes due include:
 1. Marital Deduction Trusts
 2. Pecuniary Credit Shelter Trust
 3. Qualified Terminable Interest Property (QTIP) Trust
- b) Husbands and Wives with Joint Assets in excess of \$5 million should have Wills which include a **Credit Shelter Trust** and should each make annual gifts of \$12,000 (or \$24,000 jointly) per person, per year to each of their children and grandchildren in order to reduce their combined future Estate tax liability.
- c) If a surviving spouse is not a US citizen, she is not eligible for the marital exclusion. In the event your Estate is in excess of \$5 million dollars or \$1 million dollars, a Qualified Domestic Trust is recommended if your spouse is not a US citizen.
- d) The United States and New York State have a combined **Estate Tax/Gift Tax** structure. You can give away or transfer via inheritance up to \$5 million dollars (lifetime exclusion) before the combined Gift/Estate Tax liability kicks in. You can also gift up to \$12,000 per person/per year (or \$24,000 for husband & wife) before the \$5 million lifetime exclusion is reduced.

These equations do not take into consideration Medicaid Planning issues and other Elder Law Planning issues.

III. Who Is In Charge of The Estate?

1. Who is your **Executor**?
 - a) The **Executor** is the person who will be in charge of your Estate after your death. The role of the Executor is to submit your Will to the Courts for Probate, collect your assets, sell your property, pay your debts and any Estate taxes due and distribute your assets as provided in your Will to your beneficiaries. An Executor is often a surviving spouse or an adult child, but can also be a friend, an

accountant, or the attorney who prepared the Will. The Executor should be someone you can trust and who you believe has good common sense and will be fair and impartial. The primary beneficiary of an estate is often the Executor, as they have the largest interest in the Estate. If the distribution of a specific item is not set forth in the Will and if more than one beneficiary wishes to claim the same asset. The Executor decides which asset will pass to which family member,

- b) You can have **one Executor** or **two Co-Executors**. If you have two or more children and you are concerned that one child may take advantage of (or boss around) the other, you can have two Co-executors, who can balance each other. However, if they generally fight and disagree over everything, you may want to appoint an impartial third party (ie: a close friend (younger than you) as your Executor. A third Co-executor is possible, but is not advised.
 - c) If your proposed Executor predeceases you, or cannot, or will not agree to be your Executor, (due to illness, or they have moved away, or their advanced age or illness prevents them from undertaking the obligations of an Executor), who will be your **Substitute Executor**?
 - If your Substitute Executor also dies, please select a third Executor. If you have named two (2) Co-Executors, if one dies, should the survivor function as sole Executor, or should a substitute Executor step in as their Co-Executor?
 - d) Your Executor will hire an attorney and accountant to assist him or her in probating your Will and managing your Estate. Your Executor has no obligation to use your attorney or the attorney who prepared your Will and is not required to use your accountant. However, the new attorney will commonly consult with the Will draftsman or the decedent's accountant, in their attempt to locate or value Estate assets.
2. If money passes to a **minor** or an **incapacitated person** (due to mental defect or some other cause), who should be in charge of the minor's or incapacitated person's money? The person who is in charge of money on behalf of a minor or incapacitated person is called the **Trustee**.
- a) If the proposed **Trustee** predeceases you or the minor (or incapacitated person), who should be the **Successor Trustee**?
 - b) If your Estate or Trust is especially large or complex or if you are concerned about your primary Executor's or Trustee's ability to handle these funds, you can select a bank or another institution or accountant or attorney to function as a **Co-Executor** or **Co-Trustee**, along with your primary Executor or Trustee.
 - c) If one of the Co-Trustees dies before the Trust ends, do you want the survivor Co-Trustee to function as sole Trustee, or do you want to appoint a successor Co-Trustee?

IV. Guardianship of Children

1. Who do you want to raise your children in the event of your death? Who do you wish to appoint as your children's **Guardian**?
 - a) If that person predeceases you or dies before the child reaches 18 years of age, who should be your **Successor Guardian**?
 - b) If you want two persons (husband & wife) to have joint custody of your children, what happens if they divorce or separate? Which one gets custody of your child?
 - c) The person who is in charge of your children's money (Trustee), can be different from the person who takes custody of your child's person (Guardian).

V. Assets Passing Outside of a Will

1. **Jointly Held Property:** Do you own any real property or a Co-op apartment or a bank account or stock brokerage account with another person? How is title held? What does the Deed, or Co-op Stock certificate, Certificate of Deposit, or passbook say?
 - a) As **Tenants by the Entireties** (e.g., *Mike Jones & Mary Jones, his wife.*) The property passes to the survivor, even if the initial decedent's Will says otherwise. This can only be used when husbands and wives jointly own real property or coop shares. The Will of the survivor will control the disposition of this property.
 - b) As **Joint Tenants with Rights of Survivorship:** the property passes to the survivor, even if the initial decedent's Will says otherwise. The Will of the survivor will control the disposition of this property).
 - c) As **Tenants In Common:** One-half (1/2) goes to the survivor and one-half (1/2) passes to the decedent's estate. The decedent's one-half (1/2) will be controlled by the decedent's Will.
 - d) **Joint Accounts:** On death, the balance of the account goes to the survivor, unless the second person's name was put on the account for convenience purposes only and there was a written acknowledgment by either party that the second person's name is on the account for convenience purposes only. When a second person's name is added to an existing bank account, New York State law considers it a gift of at least one-half (1/2) of the account to the second person, unless you can prove that it was a convenience account (to help the owner with check writing, withdrawals, etc.). In addition, if you put a second person's name on an account, the judgment creditors, tax creditors and other lienors of the second person have the right to attach (take) the contents of the account on which their name appears, even if the funds belong to the first person.
 - e) **In Trust For Account (i/t/f):** The funds in the account go to the listed beneficiary(ies) after the first person's death. The funds belong to and remain under the sole control of the primary person on the account until their death. The

listed beneficiaries (and their creditors) have no right to the funds in the account until after the death of the primary account holder. In trust for accounts are sometimes referred to as a “Poor Man’s Will.”

- f) **Pay on Death Account (POD)** is similar to an i/t/f account.
- g) **Custodian for child under the Uniform Gift to Minors Act (UGMA).** A person under the age of 18 does not have the legal authority to sign a contract or open a bank account. Children’s money is usually deposited into a custodial account which is maintained for the child by their parent or a 3rd Party. The funds belong to the child and pass to the child at 21 years of age. The Custodian is only permitted to use the funds to benefit the child.

2. Life Insurance - Questions:

- a) Do you own any life insurance policies on your own life or on the life of another?
- b) Do you have any life insurance benefits or death benefits through your employer or union?
- c) Are you a Veteran or is your spouse a Veteran?
 - Do you have a GI (VA) life insurance policy?
- d) Certain issues that must be considered for any life insurance policy:
 - Who is the Primary Beneficiary? Are you sure?
 - Who is the Secondary beneficiary?
 - Do they have different percentage shares?
 - What is the face value of the Policy? How much is paid on death?
 - What is the cash value of the Policy?
 - Does the policy terminate or reduce at a future date or age? Age 70?
 - Is the Policy paid up?
 - How much premium do you pay each year?
 - Who owns the Policy? Who had the right to change beneficiaries?
 - Who is paying the premiums?
 - When are the next Policy premiums due?
 - What is the name of the company that issued the Policy?
 - What is the policy number?
 - Where is the original policy?
 - Have you ever changed the beneficiary(ies)?
 - Where is a copy of the latest Change of Beneficiary form?
 - Who is the life insurance broker?
 - Have you taken a loan against the Policy? How much do you owe? What is the interest rate? Is there a repayment deadline?
 - Do future dividends reduce the premium due or buy more insurance coverage?
 - Is it Term Policy? Is it a Whole Life Policy?
 - Is it a second to die life insurance policy?

- Do you have any life insurance related to your business?
 - Do you own the Policy, or your partner, or the Corporation, or your employer? Who is the Beneficiary?
 - Has the Policy been assigned to anyone as security? Who?
- e) If you purchased or obtained life insurance while you were married to *another spouse*, **did you remember to remove that person as a beneficiary?**

- If wife (husband) #1 was around when you first purchased an insurance Policy, or when you were first hired at your place of employment and you signed company or union pension plan forms many years ago, did you remember to remove her (him) as beneficiary after her (his) death, or following your divorce? Is wife (husband) #1 still a named beneficiary on this very old Policy or Pension Plan? You should always check with the insurance company or employer's personnel department. I have administered many Estates where this problem was discovered after the death of the insured, when it was too late to correct. A 2008 change to New York State Law (EPTL 5-1.4) terminates all Will bequests and insurance beneficiary designations to divorced persons (ex-wives and ex-husbands), unless the Divorce Decree states otherwise. But, the law in other states where you may die, may be different and this statute does not cover ex-girlfriends listed on a Policy or Pension Plan.

You should always check with your insurance carrier or employer's Pension Unit or Personnel Department, just to be certain.

- f) **If the primary or secondary beneficiary is a minor or young adult, do you want the money to go to them outright? or should it pass into the Testamentary Trust to be controlled by the Will?** Would your 18 or 19 year old know how to handle \$100,000 (or more)?

- If you do not want the proceeds of a life insurance policy or pension fund or annuity to go to a child or young adult, I recommend that the Beneficiary #1 in the policy be the "Testamentary Trust established by my Last Will and Testament to benefit my children _____ & _____." The successor Beneficiary can be "My Estate." If you make the beneficiary a specific person or persons, the funds pass directly to them, outside your Estate. If they are a minor, the funds **MUST** be deposited into a guardianship account until they are 18 years of age, and they get full access to all of the funds at 18, and no access before 18 years of age without a specific Court Order in each instance. Do you want your 18 year old child to have unrestrained control over \$100,000? (They can use it to buy the first hot car they want, instead of paying for college).

3. Life Insurance Trusts

- f) You may also wish to consider transferring a whole life policy with a low cash value, but high face value, into a separate trust to benefit children and grandchildren, thereby taking it out of your taxable estate completely. Alternately, you can purchase a second to die life insurance policy in the name of the trust you have established to benefit the children and grandchildren. If the annual premiums are less than \$12,000 (or \$24,000 per year), the \$5,000,000 lifetime exclusion is not effected.

4. Pensions, Annuities, IRA's:

- f) Do you participate in a Pension or Annuity plan with a current or former employer or union? If so, consider the following:
1. Do you receive annual statements?
 2. Do the Pension Benefits continue to your spouse or a Third Party if you die?
 3. Is the monthly benefit reduced if you die? How much is the reduced benefit?
 4. Who is the beneficiary of the Pension if you die?
 5. Is there a minimum death benefit?
 6. Have you made any contributions?
 7. Have you taken any distributions or loans against the Pension, Annuity or IRA?
- g) If the Pension Plan, KEOGH Plan or IRA consists of pre-taxed dollars (the employee never paid income tax on these funds), the distribution will be taxed to the recipient as ordinary income, unless they roll it over into a rollover survivor IRA. Not all beneficiaries are eligible to rollover the pension or IRA distribution into their own IRA.
- h) ROTH IRA's contain dollars that have already been taxed. The beneficiary will not pay income taxes on the proceeds.

VI. Living Will / Health Care Proxy

2. **Who will make Medical Care Decisions for you if you become ill and are physically or mentally unable to do so?**
- f) If you become physically and mentally incapacitated, with no expectation of recovery, do you want to be hooked up to medical life support machines?
- Do you want the doctors to take all medical steps possible to prolong your life? (I want to go down fighting.)
 - Or, do you wish to die peacefully, with medical intervention only to reduce pain and provide comfort if there is no expectation of meaningful recovery? Do Not Resuscitate (DNR).

- g) Who should make medical care decisions on your behalf if you are no longer able to make these decisions for yourself?
- If there is no hope for your survival, who should be authorized to tell the doctors that you have suffered enough, and there is no longer a need for life support equipment?
- h) Do you wish to appoint one(1) person (my wife), or two(2) persons (my two children), who must consult with each other? What happens if they disagree?
- i) If that person predeceases you, or cannot, or will not make the hard decision, (ie: to terminate life support), who else should make the decision on your behalf?
3. Have you updated your Living Will recently to take into consideration the recent federal HIPPA Patient Confidentiality rules?
- f) You want the person who needs to make medical care decisions for you to have full access to your medical records and medical information and that your doctor has your permission to discuss your medical care with them.

VII. Power Of Attorney

2. **Who will make business and economic decisions for you, if you become ill and are physically or mentally unable to do so?**
- f) Have you signed a Durable Power of Attorney which is still in effect?
- When was it signed?
 - Was it recorded with the City Register or County clerk's office?
 - To whom was it issued? Who is your Agent?
 - Do you have a copy?
 - Was it terminated? How? Was the termination also recorded with the City Register?
 - Are there any restrictions on this Power of Attorney?
 - Is the Power of Attorney the new New York Durable Power of Attorney (after September 2010), or an older form?
3. Do you wish to grant a Power of Attorney to your spouse or to a third party which gives them the authority to sign documents on your behalf?
- f) This control over your assets (to sell, buy or transfer), can be over a specific asset or over all of your assets, and can be used if you are unavailable to attend a Closing or if you are unable to sign documents due to illness or disability, or to make financial decisions related to your assets.

- g) Do you want to issue the Power of Attorney to two people and require that they must jointly sign, or that either one can separately sign documents on your behalf in order to exercise the Power of Attorney?
 - h) If the person to whom you granted the Power of Attorney predeceases you or is unavailable or unwilling to act as your Agent, do you want to appoint a second person as your Successor Agent?
 - i) Do you want the Power of Attorney to go into effect immediately or do you want it only be effective at a later time (**Springing Power of Attorney**) when your physician certifies that you are suffering from diminished capacity which would preclude you from conducting your affairs in a competent manner?
 - j) Should that person to whom you are granting this Power of Attorney have the right to continue to make annual gifts to family members in the same pattern that you have already been giving (such as \$12,000 per year), or some other sum per person, per year?
4. Husbands and wives who have long-term stable marriages, will often execute and exchange reciprocal (Cross) Powers of Attorneys or reciprocal (Cross) Springing Powers of Attorney.

VIII. Funeral Plans

2. **How much should your family spend?**

- f) Have you discussed your Funeral Plans with your family? (i.e.: the size and expense).
 - g) What funeral home should be used?
 - h) In what cemetery should you be buried?
3. **Preplanning and Prepaying** your own funeral will relieve your spouse, children and your survivors of possible confusion and guilt and it reduces the likelihood of having a funeral that is too large or too small. [*I want the same type of funeral and casket (size and expense) as I spent on my husband's funeral.*]
- f) Prepaying for a funeral locks in the size of the funeral and restricts its expense.
 - g) The interest earned on the money which is prepaid, usually covers any inflation in the cost of the funeral.
4. The following factors should be taken into consideration in preplanning a funeral:
- f) How much do you want to spend and how elaborate of a funeral do you want? [*My friend Maria's family spent too much money on her funeral. It was too gaudy.*]

- Do you want flowers?
- Do you want donations to _____ charity in lieu of flowers or some other item?
- Do you want a wake? For how many days should you be laid out for viewing before burial?
- Do you wish to be buried with military honors?
- Who should be in charge of the funeral plans?
- Who should be invited?
- Do you have a list of people with their phone numbers, that your family should invite?
- How expensive a casket do you want? The expensive caskets are in the front on display, the inexpensive caskets are in the back of the funeral home's showroom.

g) Do you want a Funeral Mass or any specific religious rules followed?

1. Do you have any Eulogy preferences? Who do you want to speak?

h) Do you already own a grave site?

- What is the name of the cemetery?
- Where is the cemetery?
- What is the Plot number?
- Where is the deed?
- Who owns the plot? In whose name is the Deed issued?
- How many plots (graves) do you own?
- How many people are customarily in each grave?
- Whom do you wish to share the grave with? Your spouse or another family member?
- Is someone else already in the grave?
- Is there any more room? Room for how many?
- Do you wish to sell, transfer or donate any empty graves which are not currently being used?

i) Do you belong to an organization which has burial benefits?

- What is the name of the organization?
- What is the name, address and phone number of the contact person?
- Are you a Veteran? Do you want to be buried in a VA cemetery? Do you want the flag and/or Honor Guard? What is your old military ID number?
- Where are your honorable discharge papers?

j) If there are any graves left over in the family plot, or extra spaces in these graves? Who should be buried in these graves/spaces?

- If the people you previously selected for these graves get buried elsewhere, what should your family do with the extra empty graves/spaces? The Executor does not make this decision. Ownership of the grave(s) passes to the distributees of the holder of the Deed to the grave(s).
- Include the extra graves in your Residuary Estate, sell them or give them to a charity, etc.?

k) Headstone:

- What size or type of headstone?
- Do you want a joint headstone with your spouse?
- What inscription do you want on the stone?
- Does the cemetery only allow footstones?

l) Does the cemetery charge extra for perpetual care? Do you wish to fund such care for you and your wife?

m) Do you want to be **CREMATED**? If so, you must have a Will provision or other writing, which specifically authorizes your cremation, in order to be cremated.

- What should be done with the ashes? Poured into the ocean? Given to your children to dispose of, or kept in an urn on the bookcase, or buried?
- Do you wish your Executor to decide on the disposal of your ashes?

IX. Transplants and Anatomical Gifts

2. Do you wish to make any anatomical donations?

- After your death, do you want your family to permit your doctors to remove and transplant any of your organs to help others in medical need, or for medical research? (Cornea, heart, kidney, liver, entire body?)
 - Have you completed an anatomical donation card or signed the consent for anatomical donation on the back of your driver's license? If not, do so today.
3. If you wish to donate your entire body to medical science, different donation procedures are used. *I will be happy to introduce you to the anatomical donation staff at your local medical school.*

X. Family Tree

2. At the time a Will is submitted to the Surrogates Court for Probate, it is the obligation of the proposed Executor to identify the names and addresses of the decedent's relatives and submit this list to the Court.

- New York law obligates the proponents of a Will, (Executors under a Will), to notify an individual's intestate distributees (those relatives who would have

received a share in an estate had there not been a Will), about an individual's death and the existence of a Will which cuts off their intestate share. This notification of the existence of a Will is issued to your relatives only AFTER your death. Beneficiaries under a Will are also notified of the existence of a bequest to them under your Will, after your death.

3. The search to identify and locate a decedent's relatives after a client's death is often very time consuming and expensive, if these relatives are unknown or if they are uncooperative. In order to reduce this expense, (and the cost of Probating the Will), the client is asked to prepare a list of the names and addresses of his close relatives and their relationship to the client (ie: Family Tree). These individuals will not be contacted until after the client's death. Please provide information about the following individuals:

f) **Spouse**

- List the name and address of current spouse and the name and dates of death of any predeceased spouses.

g) **Divorced**

- Were you ever divorced?
- If so, when, where and from whom? Please identify the date of your divorce, the State you were divorced in and the name of your prior spouse. Is your former spouse still living?
- Supply a copy of the divorce papers.

h) **Children**

- List the names, addresses, phone numbers and dates of birth of **ALL** of your children, even those to whom you do not wish to leave anything, in addition to the names, addresses, phone numbers and dates of birth of **ALL** adopted and out-of-wedlock children.
- Do you expect to have any more children?
- Have any of these children predeceased you? When?
- Did your predeceased children have any children (your grandchildren)? Who?
- Did you or your spouse or your children have any **out-of-wedlock** children? You must identify them to your attorney so that they can be included or specifically excluded in your Will and Estate plan.
- Is your spouse or legitimate children aware of the existence of the out-of-wedlock child(ren)?
- Did you ever have an Order of Filiation (Paternity Order) issued against you or your spouse or against any of your children, related to the out-of-wedlock child?
- Was anyone adopted? If so, who, when and where?

i) **Grandchildren**

- List the names, addresses, phone numbers and dates of birth of ALL grandchildren (in or out-of wedlock), and adopted grandchildren.
- If any of your children have predeceased you but have left children, what are their names and addresses and what are the names of the grandchild's surviving parent or guardian.

j) **Parents (and Step-parents)**

- List their names and addresses.
- If they have died, their dates of death.

k) **Siblings**

- Names and addresses of your brothers and sisters and their spouses and their children.
- If any have predeceased you, the dates of their death and the names and addresses of their children (your nieces and nephews) are important.
- In the event you have any step-brothers and step-sisters, please identify your step-brothers and step-sisters and their parents.

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l) Was anyone adopted? When? Where?

m) Was anyone born out of wedlock?

- Was an Order of Filiation (paternity order) issued?
- Please supply a copy, if possible. If not, when and in what State and County was the paternity order issued?

n) Are there any child support payments that are still open and unpaid, to you or by you?

o) Do you or any members of your family have an old family bible which contains a copy of your family tree?

XI. Assets

2. A list of assets is very useful; both in locating a decedent's assets after their death (the treasure hunt) and to determine the size of the possible Estate in advance and, if any elaborate Estate tax planning steps need to be taken in order to reduce federal and state estate taxes. The following are questions about current assets:

f) Do you own a **house, Co-op Apartment** or any real property?

- In whose name is title to the property? Individual, Joint Tenants with Rights of Survivorship, Tenants by the Entirety, Tenants in Common? (The attorney should inspect a copy of the deed or Co-op Stock Certificate).
- Where is the property and what is its approximate Fair Market Value? Where is the deed?
- Does the property have a mortgage? What is the balance? Whose name is on the mortgage? When will the mortgage be paid off?
- If the mortgage was paid off, was a Satisfaction of Mortgage issued and recorded in the City Register to cancel the mortgage? Do you have a copy of the recorded Satisfaction?
- Who is paying the real estate taxes on the property and who is paying for the maintenance of the property?
- Does the property have adequate fire & liability insurance? How much insurance coverage is there in the event of a fire (80% of FMV), or if someone should slip & fall on the property?
- How much liability insurance do you have on your car? (It is easier to kill or injure someone with a car than with a house.)
- Is there a long term lease on the property or does anyone have a life estate or a remainder interest in the property?
- Have you done any major renovations or additions to the property and did you obtain a new Certificate of Occupancy at the time. (My husband added a room to the house 20 years ago and did the work himself, and did not obtain a building permit or disclose it to the Building Department, Town or tax assessor so our real estate taxes would not increase. This could create an expensive problem when you try to sell the house in the future.)

g) Where are your **bank accounts**?

- Bank names and addresses
- Account Numbers
- Approximate balance in each account?
- Whose names are on each account?
- Are any accounts joint accounts or In Trust For accounts with someone else? Who and Why?
- Did you add someone's name to your existing account for your **convenience purposes** only, or do you wish the contents of the account to pass to that individual upon your death?
- If you put the person's name on the account for **convenience purposes** (to help you write checks and pay your bills), but you do not want them to get the money on your death, they should not be on a "Joint Account." The account should be in your name only (or yours and your spouse's), and the third party should be given signature authority via a Power of Attorney at the bank. Otherwise, the proceeds will be paid on your death to the "co-owner" of the account. If they are on a Joint Account as a convenience only, did you or your Joint Account holder sign an acknowledgment that it is a convenience account and does your attorney have a copy of that written statement?

h) Do you have any **IRA's** or **KEOGH** accounts? Who are the beneficiary(ies) of these accounts?

- Is it a regular IRA or a Roth IRA? Roth IRA's contain after tax dollars.
- The recipient of a regular IRA will either roll it over into a spousal IRA or will pay income taxes on the money, as they draw on it.
- *See the above questions regarding bank accounts.*

i) Do you have a **Safe Deposit Box**?

- Where is it? Bank name, address and the box number?
- Whose name(s) are on the box?
- Does anyone else have access to the box via a Power of Attorney?
- What is in the box?
- Is someone else's name on the box for your convenience only (via a Power of Attorney), or do you want the contents of the box to pass to your surviving co-owner?
- Where are both keys to the box located? (The bank issued two(2) keys to you when you opened the box.)

j) Do you have a **stock brokerage account** or any stocks or bonds?

- Name, address and phone number of your stock broker.
- Brokerage Account numbers
- Approximate balance in your accounts
- Is anyone else's name on the account (Joint, POD)?
- Does anyone else have signature control or discretion over the account?
- Are the stocks being held in a brokerage account?
- Do you have any paper stock certificates or bonds in your name? Or in bearer form? Where are the paper stock certificates?
- List any mutual funds, stocks or bonds in your possession and value of same. (Company name, number of shares, etc.)
- Does the account have a beneficiary? (Pay on Death to _____.)

k) Do you have a car?

- Is the car owned or leased?
- What is it's make, model and approximate value?
- How much liability insurance do you have on the car?
- Do you have an umbrella policy with additional coverage?
- Is there a Note, security agreement or lien on the car?
- How much do you owe on the car?
- Is it adequately insured for damage or liability?
- If the car is leased, when does the Lease end and what is the buy out amount?

- l) Do you have any **valuable collections** (e.g., stamps or coins), antiques, art, very valuable jewelry or gold?
- Where are they?
 - Are these items separately insured or listed on an insurance floater or policy schedule?
- m) Do you own a **business** or an interest in a business, stock, partnership, or did you recently sell a business?
- Do you have a **joint shareholder** or **buyout agreement**?
 - Did you fund the buyout agreement with life insurance?
 - Where are the original stock certificates?
 - Where are the life insurance policies?
 - Who are the owners of the buyout policies?
- n) Do you have any other Assets? (e.g., boats, campers, trucks, mobile home, plane, etc.)
- o) Do you have any interest in any other investment fund or alternative investment vehicle? (e.g., hedge fund, private equity fund, venture capital fund, REIT)
- p) Do you hold any patents, trademarks or copyrights?
- Have you timely renewed same?
 - Are you receiving any dividends or benefits from same?
 - Do we have to re-register after your death?
- q) Does anyone owe you substantial funds? (Or, do you owe anyone a substantial amount of money?)
- Who is the debtor?
 - Did they sign a Promissory Note or is there some other written evidence of the debt?
 - Have you forgiven any portion of the debt? Did you do so in writing?
 - Do you hold a mortgage on any real estate owned by someone else who owes you money?
 - Where is the original note and mortgage?
 - Is the borrower current?
 - Are they paying the taxes on the property?
 - Do they provide proof of the payment of taxes and evidence of insurance to you annually?
 - Is there also a bank mortgage on the property? Are you holding a second mortgage?
 - Is the debtor current?

3. What is your current income and the sources of the income, and do you have future expected income streams?
 - f) Wages
 - g) **PENSION(s)**
 1. **Is there a Beneficiary or Survivorship Provision?**
 2. Who is the listed beneficiary?
 3. What are the benefits?
 - h) Social Security
 - i) Rail Road Retirement
 - j) Rental Income
 - k) Mortgage Income
 - l) IRA's and KEOGH's
 - m) Other - Promissory Notes
 - n) Profit Sharing Plan - Who is the Beneficiary?
 - o) Deferred Compensation Plan.
 - p) Annuities - Is there a Survivorship provision?

4. Are you currently a party to any lawsuits as a Plaintiff or a Defendant?
 - f) Who is the attorney or Insurance Company handling the lawsuit?
 - g) Have you been in an accident or have you been seriously injured recently? When and how?
 - h) Do you have any other Causes of Action or claims?

5. Do you expect to receive money from a relative, an estate or Trust in the future?
 - f) Are you the Executor in a Probated Will, or a Trustee of an existing Trust or are you the beneficiary or residuary beneficiary under a Probated Will or existing Trust?

6. Are you, or is your spouse, a veteran?
 - f) What is your VA number?
 - g) What was your service number?
 - h) From which service? When and where were you discharged?
 - i) Where are your discharge papers?
 - j) Do you have a V.A. Life Insurance Policy? How much is the face value of the policy?

7. Do you belong to a Union, Organization, Society or Lodge, or does your employer provide life insurance, death benefits or funeral expenses for members?
 - f) What are these benefits?
 - g) Whom should we contact in the event of your death?
 - h) Does your organization have burial benefits?
 - i) What is the name, phone number and address of the contact for these benefits?

8. What is your Social Security Number or Rail Road Retirement Number? Do you have Medicare (Part A or B)? Drug benefits?
9. *Do you currently owe money to anyone or do you have any large debts, outstanding loans, or notes?*
- f) Who is the Creditor?
 - g) How much was the original debt and what is the current amount of the debt?
 - h) Is anyone else a Co-signer (co-obligor) of this debt?
 - i) Is there written evidence of the debt?
 - j) Where are the promissory notes?
 - k) Have you granted a mortgage or lien on any asset you own to secure this debt?
 - l) Was any part of the debt forgiven?
 - m) Is there written evidence of this forgiveness?
 - n) Do they have a life insurance policy on you?
 - o) Was the life insurance policy transferred to you after the debt was repaid?

10. Do you have any prior Wills?

- f) When were they executed?
- g) Where are the original Wills?
- h) How does your new desired asset distribution differ, from your prior Will and why?
- i) What changes do you want to make, and why?

Your original Will can be kept by you in a safe deposit box or other secure fireproof location, or it can be kept by your attorney for safekeeping, or it can be kept by your Executor, or it can be filed with the Court for safekeeping (*rare*). Although photocopies of your Will can be given to your beneficiaries or Executor and held by you, the *original* Will must be located after your death, and filed with the Court. If the original Will is lost or destroyed, it will be very difficult to probate a photocopy of your Will unless your Executor can prove that your Will was inadvertently lost or destroyed in a fire and it was not intentionally destroyed (revoked) by you.

The foregoing questions are intended as an introductory guide and are not intended to cover all issues, just the most common. These questions do NOT take into consideration significant Estate Tax issues.

If you have any questions, please feel free to call me at (212) 290-7800 or email me at nealbkat@gmail.com.