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DISCLAIMING YOUR INTEREST IN SOMEONE'S ESTATE

Let's say a distant family member, who you hardly knew (but who obviously remembered you) died and left you a huge house in their Will. At first, you would think WOW! That's terrific. I won the lottery. A huge place to call my own, a big pool, tennis court; a real Newport Mansion type house. So what's the problem? Well, after the swelling goes down and your headache subsides from celebrating all night, you might begin to think about it deeper. Then the headache starts to come back. "I can't afford this great gift", you think to yourself. Its one thing to own it, but quite another to maintain it. Let's see, you begin to think. I can't afford the taxes on my mansion. That's half my annual salary. And what about the landscaping and maintenance? Whew! I better just say thanks, but no thanks.

Mansions aside, this is not a fairy tale. Rather, it's a common issue in estate planning. People are often gifted items that they truly can't afford to take. In the sample above, the typical response is to take the house and turn around and sell it. That's an obvious choice. But there are many instances where a beneficiary is named and a bequest is made and the beneficiary simply doesn't want it AND, there is no profit to be made. In that situation the only choice is what's known as a "disclaimer".

Any person who is entitled to some or all of the property of a decedent may not want to accept it and they can disclaim all or some of it. However, there are rules in disclaiming property that most people aren't aware of. Rules which, if not followed, will result in an "assumption of ownership and acceptance". If the "rules" aren't followed the right way, the IRS can make a determination that the property you think your disclaiming was actually an acceptance and then a subsequent "gift" which can result in a tax liability. A HUGE tax liability.

The rules for a "qualified disclaimer" are simple to follow, but you need to know what they are. 1) There must be a irrevocable and unqualified written refusal to accept the property; 2) that written refusal must be received by the estate's representative within nine (9) months of either the date of the transfer or of when the recipient reached age 21, whichever is later; 3) you cannot refuse the gift, but retain or accept an interest or benefit in the property; and 4) the property must pass in another manner in which you have no direction or control.

In layman's terms, you have 9 months to say no, in writing, to the estate representative without enjoying some sort of benefit from it and you can't direct where it goes if you say no! Hence, you can't sleep in the house after telling the representative to give it to your sister instead.

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If you don't play by the rules, the taxman will get you and the results can be big. Very big. And that's no joke. The best way to say no is to work closely with the attorney for the estate and if there is none, make sure you get complete guidance from the probate court every step of the way.

Anthony J. Medico, Esq., *has practiced law for over 22 years. To ask a question for this column, or to receive Medico's free Estate Planning Survival Guide, visit his website at www.medicoandassociates.com, send an e-mail to Amedico@medicoandassociates.com or call (203) 661-8151. You can read most of his previous columns on his Greenwich Time estate planning blog on the internet. Just go to http://www.greenwichtime.com/blogs and scroll down until you find him under the business section. Enjoy.*