Ask

Can someone ask the law firm who wrote the deed, MWB&B, or any law firm, to ask Director Kevin Greenlief why he does not recognize the 1992 deed for Accotink?

If I ask history suggests that the accountants might use that to justify shutting me out under the guise of protecting my family from me by using the two attorneys pattern. .

Extracts from “2attys-tool”

Please judge for yourself. Does the 2attys-tool mean, when thought through to it’s logical conclusion, that the client/beneficiary/etc., has three choices: (1) Follow Edward White’s instructions, (2) Go to another attorney who you know who’s advice can be relied upon, but it will trigger the accountant’s ‘2attys-tool”, or (3) go without reliable legal advice and do the best you can with common sense?

“As far as an income prediction for the Estate is concerned, I can make no intelligent prediction since I do not know how long it will remain open. I have been continuously burned in making gratuitous comments about the tax liability of the heirs, and counsel and other attorney friends have stated to me, that given the performance of Mr. O'Connell, that I should make no comment at all. I tried to be helpful, but that did not work. I can only say that had I not been adamant about re-valuing the Accotink property, Mr. O'Connell's initial approach would have cost this estate dearly. From the comments in his recent demands for "information", I can see that he is jumping to conclusions based on no knowledge at all. I will not reply directly to him on any future aspect of this estate. **As a matter of fact I am precluded as an attorney from dealing with an adverse party who is represented by counsel**. I have no intentions of having him dictate the duties of the fiduciaries. If his counsel wishes to discuss anything, I am certainly available.”
(From Edward White’s letter to trusting Jean Nader, February 2, 1993)

"Notwithstanding Mr. O'Connell's direction that I not communicate with you, the Canons and Legal Ethics Opinions are explicit in this regard. I do hope this does not burden Mr. O'Connell, but I have no other choice.
(From Edward White letter to E. A. Prichard, copy to trusting Jean Nader, August 2, 1993)

McGUIREWOODS
BATTLE&BOOTHE

Transpotomac Plaza
1199 North Fairfax Street
Alexandria, VA 22314

Court Square Building
Charlottesville, VA 22901

3950 Chain Bridge Road
Fairfax, VA 22030

8280 Greensboro Drive
Suite 900
P.O. Box 9346
McLean, Virginia 22102

(703) 712-5000
Fax: (703) 712-5050

World Trade Center
Norfolk, VA 23510

One James Center
Richmond, VA 23219

137 York Street
Williamsburg, VA 23185

The Army and Navy Club Building
1627 Eye Street, N.W.
Washington, DC 20006

November 15, 1991

Anthony M. O'Connell
6541 Franconia Road
Springfield, Virginia 22150

Re: Land Trust Agreement for approximately 15 acres of land located in Fairfax County, Virginia, known as Accotink

Dear Mr. O'Connell:

Enclosed for your review please find drafts of the following:

1. Deed in Trust Under Land Trust Agreement;

2. Power of Attorney; and

3. Land Trust Agreement.

When reviewing these documents, we would appreciate your specifically verifying that the ownership percentages set forth on page 12 of the Land Trust Agreement are accurate. Additionally, since we noticed a discrepancy between the way your sister Sheila's last name was spelled in your letter to me of October 23 and in your mother's will, we would like you to verify which spelling is accurate.

Please call me once you have had an opportunity to review the enclosed.

Sincerely yours,

E. A. Prichard

EAP/RAH/slw
Enclosures

McGUIREWOODS
BATTLE&BOOTHE

Transpotomac Plaza
1199 North Fairfax Street
Alexandria, VA 22314

Court Square Building
Charlottesville, VA 22901

World Trade Center
Norfolk, VA 23510

8280 Greensboro Drive
Suite 900
P.O. Box 9346
McLean, Virginia 22102

(703) 712-5000
Fax: (703) 712-5050

One James Center
Richmond, VA 23219

The Army and Navy Club Building
1627 Eye Street, N.W.
Washington, DC 20006

Avenue des Arts 41
1040 Brussels, Belgium

January 15, 1992

Mr. Anthony M. O'Connell
6541 Franconia Road
Springfield, Virginia 22150

Re: Accotink

Dear Tony:

You and I have recently discussed different ways you and your sisters can hold title to the Accotink property. As you know, one option is to establish a land trust. A land trust is basically a general partnership with title to the land being held by a Trustee as a convenience to the partnership. The beneficiaries of a land trust file partnership returns. Profits and losses are distributed and taxed pro-rata depending on the share of each partner.

Another alternative is to form and transfer the property to an S corporation. As we discussed, the main benefits to structuring the transaction in this fashion are that corporation law is well-established and relatively straight-forward, it provides for a centralized form of management over the property, and it limits liability to assets owned by the corporation, and not those owned individually.

There is, however, a third approach that should be considered as well -- a limited partnership. As you may know, limited partners cannot participate in the control of a limited partnership. Accordingly, we could structure such a partnership to be comprised of one general partner and two limited partners, who would be your sisters. Although we could appoint you as the general partner, my preference would be to form a corporation, which would be wholly owned by you, that would serve as general partner. Just as one of the benefits to an S corporation is its limited liability aspect, a corporate general partner wholly owned by you would limit your potential exposure should a claim or grievance arise out of the ownership or your management of the property.

Like most limited partnership agreements, the partnership documents we would prepare would give the general partner broad control over the partnership's daily operations. Since you would own 100% of the stock of the corporation that serves as general partner, you would, as an officer or director of the corporation, be in indirect control of the partnership. This is thus one advantage over an S corporation, which would require the formation of special voting rights to enable you, as equal beneficial owner of the property with each of your sisters, to maintain control over the property.

Another advantage to structuring this transaction as a limited partnership is that we could incorporate into the partnership documents a right on behalf of the general partner to require all partners, including limited partners, to inject capital when the general partner deems necessary. Although these required infusions could be set up to be in any proportions agreed to by the parties, we could establish them to be in proportion to the ownership interest of each of the individual partners. Accordingly, this would help alleviate your concern about your ability to get funds from your sisters when necessary.

We would also draft the partnership agreement to restrict the ability of each limited partner to transfer his or her interest. This provision would stipulate that a limited partner's interest could be transferred only with the consent of the general partner, which consent could be withheld in the general partner's sole discretion. Not only would this give you, through the corporate general partner, some control over who the beneficial owners of Accotink would be, but it also satisfies various tax law requirements that must be met when establishing a valid partnership.

Finally, when comparing a limited partnership and an S corporation, you should consider the tax consequences that will arise when the property is eventually conveyed from the entity to individuals. When property is distributed from a corporation to one or more of its shareholders, it is deemed for income tax purposes to be sold at the property's fair market value at the time of the transfer. When property is conveyed from a partnership to an individual, however, this presumption of a sale does not apply. Accordingly, to minimize potential tax liability several years in the future when this property is conveyed from the entity, it may be beneficial to put the property in a partnership's name, rather than in the name of a corporation.

I should caution you that establishing a limited partnership as contemplated by this letter is a slightly more expensive proposition than simply establishing an S corporation, since in the former instance we would form both a partnership and a corporation, while in the latter we would form only a corporation. However, you may find that this added cost would be ultimately outweighed by the advantages of structuring the transaction in this fashion.

Regardless of which of the above options you choose, the Lynch deed of trust note could be used to fund the expenses of developing the land. The note could

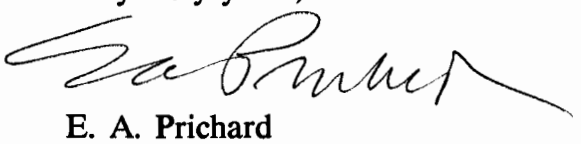
be transferred to either a limited partnership or an S corporation as capital. It could also be transferred to you as Trustee for a Virginia land trust and held as capital.

I would be happy to discuss this third alternative with you and your sisters in greater detail.

I spoke to your sister in Maine. She asked whether she could endorse over her share of the Lynch note conditionally, and I agreed she could. She had in mind agreeing that up to $X per year could be spent by you for expenses and the balance remitted to her.

I look forward to hearing from you.

Very truly yours,



E. A. Prichard

EAP:RAH:tle

cc: Francis X. Mellon, Esquire
Mark C. Dorigan, Esquire
Robin Heimann-McGhee, Esquire

5368\letters\oconnell.ltr

McGUIREWOODS
BATTLE&BOOTHE

Transpotomac Plaza
1199 North Fairfax Street
Alexandria, VA 22314

Court Square Building
Charlottesville, VA 22901

World Trade Center
Norfolk, VA 23510

8280 Greensboro Drive
Suite 900
P.O. Box 9346
McLean, Virginia 22102

(703) 712-5000
Fax: (703) 712-5050

One James Center
Richmond, VA 23219

The Army and Navy Club Building
1627 Eye Street, N.W.
Washington, DC 20006

41 Avenue des Arts
1040 Brussels, Belgium

EDGAR ALLEN PRICHARD
VIRGINIA AND DISTRICT
OF COLUMBIA BARS
DIRECT DIAL: (703) 712-5443

July 20, 1992

Mr. Anthony O'Connell
6541 Franconia Road
Springfield, Virginia 22150

RE: Land Trust Agreement

Dear Tony:

Enclosed is a revised version of the Land Trust Agreement for the Accotink property. As you suggest, I have amended the agreement to allow you, as Trustee, to sell, exchange, convey, mortgage, or assign the property without the consent of your sisters or their successors, as Beneficiaries.

You should be aware that such authority might not withstand judicial scrutiny. A court of equity could conclude that you have not acted properly in that you are the Trustee, the Attorney-in-Fact, and a Beneficiary. Courts generally uphold a broad grant of authority to the trustee of a real trust, but since this is a land trust where the power to manage and control the property typically remains with the beneficiaries and you are serving as both the trustee and the attorney-in-fact, as well as being a beneficiary, a court might allow one or both of your sisters or their successors to challenge a sale of the property.

Your authority, as Trustee, to sell the property is much less susceptible to legal challenge as long as you remain the Attorney-in-Fact, and as such give a written direction to the Trustee to sell the property.

We have found no Virginia authority to preclude granting the Trustee such broad powers, but you should understand that despite the broad grant of power to the Trustee in the Agreement, the Beneficiaries may still be allowed to contest a sale of the property.

Also, I have included the compensation provisions you requested in a new paragraph 9. An additional warning should be given in relation to the amount of compensation, in that a 1/3 commission of the value added is much greater than Virginia courts generally find to be reasonable. The courts usually hold that a 5% commission on sales is reasonable compensation, with slight increases or decreases depending on the duties and efforts required of the trustee. Again, we have found no Virginia authority precluding a 1/3 commission of any realized gain in value, but if challenged, a court might reduce the percentage.

I look forward to hearing from you after you have had a chance to review these revisions.

Very truly yours,

E. A. Prichard

EAP/tjt
Enclosure (As stated)

McGUIREWOODS
BATTLE&BOOTHE

Transpotomac Plaza
1199 North Fairfax Street
Alexandria, VA 22314

Court Square Building
Charlottesville, VA 22901

World Trade Center
Norfolk, VA 23510

8280 Greensboro Drive
Suite 900
P.O. Box 9346
McLean, Virginia 22102

(703) 712-5000
Fax: (703) 712-5050

One James Center
Richmond, VA 23219

The Army and Navy Club Building
1627 Eye Street, N.W.
Washington, DC 20006

41 Avenue des Arts
1040 Brussels, Belgium

EDGAR ALLEN PRICHARD
VIRGINIA AND DISTRICT
OF COLUMBIA BARS
DIRECT DIAL: (703) 712-5443

February 11, 1993

Mr. Anthony O'Connell
6541 Franconia Road
Springfield, Virginia, 22150

Dear Tony:

You spoke with Tim Dimos on the telephone so you know his advice: that insofar as transfer of title is concerned the Virginia Land Trust Agreement which was signed by your sisters and yourself operates to transfer title to you as Trustee. Tim believes, however, that you will need a receipt to show the Commissioner of Accounts in order to close out the trust created by your father. I have prepared such a receipt and enclose two copies. Bearing in mind that you would prefer not to have to ask your sisters to sign anything else I have made it an assignment and receipt calling for your signatures only. Attach to it a copy of the recorded land trust agreement and I believe it should satisfy the Commissioner of Accounts. If it does not the worst that will result is that we will have to add the signatures of your two sisters. I will keep the receipt in my computer so that if the other two signatures are required I can add them and print a new receipt.

If Jesse Wilson has a question about the receipt you may tell him that you will have me call him and explain my thinking.

Sincerely yours,

E. A. Prichard

EAP