

The Hunt for Who's Responsible for Tom Clancy's Estate Tax

Legal Alert
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Tom Clancy, who died in October 2013 at age 66, was best known for his many *New York Times* # 1 bestsellers in the techno-thriller spy genre he invented, but the author was not as renowned in the obscure world of estate tax allocation. That changed a bit in late August.

Mr. Clancy's \$83 million dollar estate, which included an interest in the Baltimore Orioles as well as a large real estate holding in Maryland and a World War II tank, ended up owing almost \$16 million in transfer taxes. Unfortunately the author's Will, according to the decision from a Baltimore probate judge, contained "inartfully drafted" direction on who should pay that tax.

The question presented to [Judge Lewyn Scott Garrett](#) was whether Alexandra Clancy, the decedent's second wife, and their child should have to pay estate taxes on the two-thirds of the estate they received from the author. Aligned against the widow were the four children from Mr. Clancy's first marriage who, in an interesting twist, argued Mrs. Clancy should get a larger share of the assets which, however, would be reduced by having to bear a portion of an even greater estate tax.

In many estate plans the provisions that determine who will be responsible for estate taxes can be almost an afterthought and not even deliberated with the client. When an estate that will be subject to estate tax is planned and there actually is a conversation about whose share will pay that tax, many clients prefer that discussion be simple and are often willing to accept the default estate tax allocation provision contained in the statutes of the state in which they reside. But simplicity may still not be realized. The default under the common law is that taxes are paid from the residue, but many states, Maryland included, consider equitable apportionment and have complicated estate tax apportionment statutes. When the taxable estate which is

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subject to such tax includes marital deduction provisions, retirement plans, accounts with surviving joint tenants or pay on death provisions, life insurance policies, partnership interests, one or more trusts and different categories of heirs and beneficiaries, the complications over who pays how much of the estate tax can increase.

For Mr. Clancy's estate tax, Judge Garrett took the position that the language in his Will showed an intent that Alexandra Clancy not be responsible for estate tax on her share of his estate.