

FATAWA AWQAF 2003

Buying a House on Conventional Mortgage and Making it into a Waqf

Question:

From: Ashraf

Sent: Thursday, November 06, 2003 9:43 AM

To: 'monzer@kahf.com'

Subject: House & Away

Assalamu Alaikum Dr Kahf,

I am a graduate from the institute of preacher, Ministry of Awqaf, Egypt.

I have read Dr. al Qaradawi's fatwa regarding buying houses on mortgage and attended your sessions at IMO conference 2003.

As I understand from Dr. Qaradawi's fatwa, buying a house on mortgage is consider to be permissible in order to give the community the opportunity to own houses and strength the community financially.

As you mention in your lectures, we have to have an Awqaf to support the community in North America, since I do not feel comfortable with buying house on mortgage, if it is only in order to own the house.

So that I am thinking to buy a house on mortgage and live in it, till InShaAllah I pay it completely off and then put in it as Waqf when me and my family do not need to live in it. (With that I will be at ease that I have fulfilled Dr. Qaradawi's reasoning in his fatwa; strength the community financially)

I would like to hear your advice and some information regarding how to put the house as a Waqf without any conflict with the Islamic Law of inheritance.

Jazaka Allah Khayran We Ramadan Mubarak, May Allah bless you and your family for your effort.

I pray to Allah accept from us all and guide us to the straight path.

Ashraf

My Answer:

From: Monzer Kahf

Sent: Thursday, November 06, 2003 11:13 AM

To: Ashraf

Subject: RE: House & Awqaf

Bismi Allah al Rahman al Rahim

Al Hamdu li Allah Rabb al 'Alamin

Wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashabihi Ajma'in

Dear Br. Ashraf

Assalamu Alaykum wa Rahmatullahi wa Barakatuh.

You are, MaShaAllah, a very kind and considerate person. This is the true ethics of righteous persons, you may disagree with a Fatwa or not feel comfortable with it but you still respect it and find it useful as long as it comes from a trustworthy 'Alem.

Your intention is very commended, to enrich the community. And your question is very relevant.

In fact some people, even in the past such as al Qadi Shurayh of the First Century of Hijrah thought that Awqaf contradicts inheritance. But this is a result of a fine confusion and it is incorrect. There is almost unanimity that Awqaf does not violate inheritance.

The fine point here is that creating a Waqf is one of the actions taken by persons who are alive and fully incapacitated to take financial actions and to enter into transactions. The principle in this regard is very expressed by Fuqaha' that "people have absolute authority over what they own." Inheritance if only after death, it is a distribution decreed by God, Ta'ala.

In Application, creating a Waqf through a last will is only valid with the limit of the one third that is permitted within the Wasiyyah. On the other hand creating a Waqf and actually transferring the title of ownership to the, say Islamic center and including a condition that you keep the right to use the property for a given period of time or until death is disposition by persons who are authorized over what they own, it is permissible.

When you want to cross that bridge, you may ask me for a suggested form that I prepared for this kind of Waqf: Waqf with a condition to benefit from the house until death and even by children after death.

Wa Allahu A'lam
Wa Alhamdu li Allah Rabbi al 'Alamin
Wassalam
Sincerely,
Dr. Monzer Kahf

A Will to an Heir

Question:

From: Islam on line

Sent: Tuesday, August 19, 2003 11:57 PM

To: Monzer Kahf

Subject: Questions on Zakah and Will

Name of Questioner Heidi

Gender Female

Age 31-45

Education Graduate

Date Submitted 8/14/2003

country of Origin Egypt

User Ref. No. 11441W

country of

Res. Egypt

Dear Sir, I have two questions the first regarding Zakah- We are a family of a good income but it is spent every month without any savings. My husband was in the army and at the end of his service he was given a bonus of a sum of money which we put aside and do not touch it for our girls' marriage and education and it is the only saving we have since our monthly income is totally spent every month and we have debts (car loans ad credit card expenses .. etc.). The money we are putting aside we do not get any income from it and it is a fixed amount and probably its value is diminishing with years. Does such money require Zakah payment taking into account that it is meant for our daughters who are minors and if we pay Zakah on such money it will eventually decrease. Also we have a piece of land- how is Zakah paid on it? My second question is regarding writing a will; is it sinful if my husband writes a will stating that all his possessions go to his daughters after death? and if he writes say his possessions in the name of our daughters by means of contracts- is that Haram? Thank you and may God bless you.

Best Regards

My Answer:

From: Monzer Kahf

Sent: Thursday, August 21, 2003 8:04 AM

To: Islam on line

Subject: RE: Questions on Zakah, Will and Waqf

Bismi Allah al Rahman al Rahim

Al Hamdu li Allah Rabb al 'Alamin

wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashabihi Ajma'in

Dear Sr. Heidi

Assalamu Alaykum wa Rahmatullahi wa Barakatuh.

1 - The sum you are saving for your daughters is subject to Zakah from the end of the lunar year that began on the day you acquired it provided it is in the amount of Nisab or more (# US\$ 1000). The rate is 2.5% and remember that Zakah is due after the passage of every lunar year from then after. They are, Wal Hamdu li Allah, much better than orphans about them the Prophet, pbuh, suggested that the guardian should invest their funds so that the Zakah does not exhaust (eat up) them. They have their Parent to their support and InShaAllah you and your husband will be able to take care of their education and marriages without even needing to use this fund and you still give it to them. It is true it will decrease but they will still be better off than the poor who deserve Zakah! By the Way, why don't you invest this fund in long term investment (Mudarabah) deposit with an Islamic bank; most likely it will give a profit that covers the Zakah in bad years and more than that in good years.

2 - If the land you have is intended to build your own new house or for the children to build on it in the future it is not subject to Zakah. If you acquired it

with the eye on watching prices of land (that are skyrocketing) and to sell it when you get a good price, it is then subject to Zakah. it is 2.5% at the end of every lunar year, the first year begins when you acquired the land.

3 - A will is invalid to an heir. It is also invalid in the amount that exceeds one third of the net distributable estate unless with the approval of the heir. This is the Shari'ah and the Egyptian law too because the family law in Egypt is essentially derived from Shari'ah.

4 - It is Haram to take any action that is intended to prevent the distribution of the estate according to the texts of the Shari'ah (by the way they are, almost all, given exactly in the Qur'an and the Sunnah).

5 - However, You and your husband are completely free to take any transaction, contract or action regarding your property while alive (and not restricted such as an action of a debtor that may harm creditors or an action during the final illness). You may give your daughters any thing including all your property provided your intention is to help them through education, marriage, etc., not to prevent other heirs from getting their shares. Notice the line that differentiates these two intentions is thin but still you must not cross it. If they are still minors, you can also establish a temporary Waqf for them, say for 20 years at the end of it will be liquidated and its asset distributed to them; and while alive you may retain control as a trustee (Mutawalli/Wasi) and you may put a provision that gives you both the right to benefit from and use these properties for your own selves. If properly worded such a Waqf is permissible in Shari'ah (It is also legal in the USA and most Western countries) and I suggest that you may consult a specialized local lawyer if you decide to take this route.

Wa Allahu A'lam
Wa Alhamdu li Allah Rabbi al 'Alamin
Wassalam
Sincerely,
Dr. Monzer Kahf

Can an Adopted Child Get a Share in Inheritance?

Question:

From: Islam on line

Sent: Saturday, May 17, 2003 7:11 AM

To: Monzer Kahf

Subject: Adopting a Child and Giving Him a Share in Inheritance

Name of Questioner

Gender

Age

Education

Graduate

Date Submitted 5/9/2003

Email

country of Origin

User Ref. No. HUCEY6

A couple who does not have any children, they adopted a child who is the husband's sister's son. The husband does not have any brothers alive but got three sisters who are married. After his death how his property will be divided. I think he can give 1/3 of his will to any one so if he wants to give that to his adopted son he can give, but what about rest of the property and money, and also what about the money he gives to his adopted son and to his (adopted son's family) will it count or he can give as much money or property while he is alive (as a gift or any other shape or form) ALSO COULD YOU ALSO PLEASE TELL what will happen to the money or property the wife will receive if she wants to give any of her money to her adopted son can she. she has one brother one sister alive.
Jazakallah

From: Monzer Kahf
Sent: Sunday, May 18, 2003 5:28 PM
To: Islam on Line
Subject: RE: Adopting a Child and Giving Him a Share in Inheritance

My Answer:

Bismi Allah al Rahman al Rahim
Al Hamdu li Allah Rabb al 'Alamin
wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashabihi
Ajma'in

Dear Br./ Sr.

Assalamu Alaykum wa Rahmatullahi wa Barakatuh.

While a person is alive he/she can do any thing with owned property; give to the adopted child, local or national Muslim organization, create a Waqf (Trust) and make himself/herself as a beneficiary while alive, etc. As long as all such actions are not wasteful to an extent that invokes measures of restrictions because of "irrational behavior". The adopted child and any natural or legal person can be given any amount, there is no limit from Shari'ah point of view, but be watchful for the tax limit in the USA if you live in it.

In a last will Such a person can assign up to one third of net estate (after expenses, taxes, funeral, etc.) to any person. the rest goes to the heirs. In the case of the man 2/3 of it the remainder goes to the three sisters and if there are no other heirs, even distant like second or third cousins, the rest goes to the state if this man lives in North America. If this man has a properly prepared last will he must give the rest to a local or national Islamic organization. It is obligatory to prepare a last will or a living trust You may consult my website for ideas on it www.kahf.net . If this man lives in a Muslim country the rest goes to the state too but it is not obligatory to make a last will. For the woman the same principles applies. she has a brother and sister who may take all the remainder after the one third.

I am sure you know that legal adoption is prohibited in the Shari'ah and unless you make arrangement through Nursing [Radha'ah] while the child was still breast-fed, he remains a stranger to this woman and if he is now after the age of puberty she is required to cover in his presence. Fostering is very much encouraged in our Shari'ah. If this adoption is made legal for immigration purposes both adopting husband (the child's uncle) and wife must observe the Shari'ah requirements in inheritance and cover. This child does not inherit anything unless through the maximum of the one third in a Valid last will [Wasiyyah].

My personal advice to this family is as follows if it is in North America: create a living trust. you will be the founder, trustee and beneficiary at the same time. you can add this child as a beneficiary too. assign in the living trust for this child one third of the net estate of the share of the first to die between you after the demise of the first to die and also one third of the share of the second to die [normally community property is considered owned half/ half]. In the Islamic form of living trust we attached a schedule of Mawarith that indicate how the remainder of the estate should be distributed if the husband dies first or the wife dies first depending on who are the survivors. assign the remainder of the estate to a local or national Islamic organization. If you live in a Muslim country there may be restriction of such trusts that are called in Shari'ah Waqf Ahli or dhurri. In either case I suggest consulting a local lawyer who is specialized in estate planning. After reading the form of the living trust from my website you may ask me any question or for any details.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabbi al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

How to Protect the Properties of Mosques in North America?

Question:

From: Seshan

Sent: Thursday, May 01, 2003 9:15 PM

To: Monzer@Kahf.net

Subject: Advice on Protection of Property designated for a Mashed
Assalamu Alaikum,

Dear Dr. Monzer Kahf,

I came across your article titled "IDENTIFYING ECONOMIC PROBLEMS OF THE MUSLIM COMMUNITY IN NORTH AMERICA AND PRELIMINARY THOUGHTS ON THEIR SOLUTION" when attempting to search the web on mosques in American which have entrusted their property to the North American Islamic Trust (NAIT). I'm on the board of directors for the Islamic Society of Central Virginia, a non-profit religious

organization based in Charlottesville, Virginia, U.S.A. We have an ongoing project of building a new Mashed of which we had purchased property for, Alhamdulillah. The previous board supported by over 2/3rd of it voting membership transferred the property to NAIT based on the intention of protecting and preserving the property and the future Mashed that is to be built, inSha'Allah.

This was met with fierce resistance by a few community members stating that in the post 9/11 climate, the authorities might target NAIT for closure and therefore endanger the status of properties entrusted to NAIT. They also claim that NAIT might attempt to seek to control or manage our community. This cumulated in two community members bringing a lawsuit against the president of the former board for transferring the property to NAIT. The case has yet to be brought before the court and lawyers on both sides have been attempting to work out a solution – one option being a new vote by the current voting membership on the issue. It is a tragedy that resources are being wasted in this manner.

Given this context, I would like to ask you how best we can preserve our Mashed property and to protect it from dissent within and without. If NAIT is a viable solution, your reasons for supporting it would be most appreciated and would help build a case for it. Perhaps you can also comment if the fear of NAIT being dissolved is justified. Alternatively, if there is another way of protecting the property, your advice is much needed. Some people have spoken about amending the society's constitution to provide more protection but your article also states that this is insufficient.

Please for give me for this lengthy email. InShaAllah
I hope I may be able to hear from you.
Jazakullah kheir.
Seshan

From: Monzer Kahf
Sent: Friday, May 02, 2003 7:07 AM
To: Seshan
Subject: RE: Advice on Protection of Property designated for a Mashed

My Answer:

Bismi Allah al Rahman al Rahim
Al Hamdu li Allah Rabb al 'Alamin
wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashabihi
Ajma'in

Dear Br. Seshan

Assalamu Alaykum wa Rahmatullahi wa Barakatuh.

This is a real tragedy that is typical to Muslims in North America. I don't know when we are going to mature and be able to distinguish between the trivial differences and important issues.

Let me give you my bias first. A few months ago I was selected to the Board of NAIT, I am now a NAIT board member.

My sincere opinion is that Although all National Islamic organizations and many local ones are potential targets of the hate-motivated conservative right's manipulation of the US government present administration, NAIT and ISNA are most likely to be the least exposed to the kinds of aggression some charitable organizations were subjected to.

Besides, if the property is in Trust with NAIT will not be exposed to whatever NAIT properties may be exposed to. Although the existing trust agreement is sound as it was formulated by lawyers, NAIT is presently in the process of improving on the Trust contractual relationship with local organization to provide more safeguards, especially in the area of liability of both NAIT and the local organization toward any third party.

Having the property with NAIT as a Trustee provides excellent safeguard towards internal differences of the kind you mentioned in your letter. This has been the main drive to have public Muslim community properties Entrusted to NAIT. It also reduces the liability exposure a little bit because the property is not in the name of the local organization and cannot be used as a tool of pressure or internal political maneuvers.

Fragmentation of Awqaf is not to the benefit of Muslims in North America both under the present administration and in the long run. We need to strengthen the legal status of the National Waqf and give it more viable ability to protect these properties. One of the things that can be done is to separate the public community properties completely from NAIT's other activities and have them in a completely independent national organization (this is now under study in NAIT's Board). The main disadvantage will be financing as all our local organizations are reluctant to contribute to such an organization because it will not have any revenues of its own (presently NAIT spends not less that 300,000 on the management of Islamic properties department).

Another way that I suggested several times is when you buy a property do not buy it in the name of the "operational" Islamic organization, buy it in the name of an organization that you will dissolve or let die shortly after you entrusted the property to NAIT or a Waqf org. This way there will be no owner and no body to sue, even in a case of dispute like yours (except of course the directors of the deceased org. and they can easily show that they were not personally responsible. This can still perhaps be done by forming a new organization, with different name and let it take over the operation of the present one and let the present organization die out by drying its donations and depleting its funds in current expenses. Surely you must not transfer any thing from the old org to the new one nor allow it to inherit the other.

Please if I can be of any other service to you or the community there just call on me and I will be glad to volunteer any help I can make.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabbi al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

