

THE IMPORTANCE OF YOUR LAST WILL AND TESTAMENT AND KEEPING IT CURRENT

If you believe that making your Last Will and Testament will make you die sooner or you believe that you will live forever, then please stop and take a minute to think about the unwanted consequences to your family. This article is not meant to scare you but briefly discuss the most compelling reasons why you need to draft a Will and keep it current.

1. The court has within its discretion the ability to appoint an Administrator (Executor or Personal Representative) for your estate if you die without a Will or if all of the parties you named in the instrument are no longer alive. The administrator will serve for a fee and be responsible to distribute your money and belongings according to your domicile's state law. With a current Will, you can choose the person who will administer your estate after death and insure that your property is distributed according to your specific instructions.

2. Upon your death, if you are survived by living children, your surviving spouse will not be the sole beneficiary of all of your estate assets. Most individuals are surprised to learn that their children will also be the beneficiaries of their estate and have an immediate vested interest in the assets. Depending upon your domicile's state law, a deceased spouse's children may be entitled to up to fifty percent (50%) of the estate assets. This may severely inhibit your surviving spouse's access to your estate assets. It may also result in the distribution of more estate assets to your children than you would have planned. Alternatively, with a Will you can insure that your spouse receives enough money to live comfortably and determine when your children will ultimately receive their inheritance.

3. If you are not survived by a spouse, your assets will be immediately distributed equally to your heirs. Under this scenario, you will not be able to protect your estate assets from your adult child's creditors or imprudent spending habits. The lack of a Will also prevents you from planning, especially when one of your children may need the inheritance more than another or from intentionally disinheriting a child. In addition, it prevents you from making a bequest or gift to other family members (including grandchildren, nieces or nephews) or friends whom you desired to help upon your death.

4. Without a Will, you will not be able to select and may not receive the guardian you desire for your minor children. Be advised that the minor children's grandparents are their natural guardian when there are no living parents. It may then be a battle in court to decide which set of grandparents become the children's guardian.

5. When you have no instrument that specifies the beneficiaries of your estate, the Probate court will have discretion to distribute your estate's assets. Alternatively, with a Will you could have bequest assets, upon your death, to any one of the following:

- a. A grandchild and the name of their guardian to manage their financial affairs, if they are a minor at the time of receipt of the bequest.
- b. A stepchild and the name of their guardian to manage their financial affairs, if

they are a minor at the time of receipt of the bequest. Most state laws define heirs as "blood" relatives and your stepchildren may not be recognized as an heir of your estate. Therefore, no inheritance would pass to them, unless they were legally adopted, despite your intentions to the contrary.

- c. Your friends. Some individuals leave substantial portions of their assets to their friends at their time of death. This is very common when spouses die without any children or immediate or close family members.
- d. Religious organization or a charity. Most state laws do not consider religious and charitable institutions as heirs. Therefore, only your estate planning documents can spell out how your money can be passed to them and insure that your favorite charity(s) gets a donation.

6. You will not be able to minimize the estate taxes, if any, that your children or heirs will owe in Federal and/or State estate taxes upon your deaths. The current tax law allows a couple to shelter upon their deaths as much as \$2 million dollars in assets from federal estate taxes. This can only be accomplished through proper estate planning documents. Without these documents, a part or all of the exemption amount may be lost and unnecessary taxes paid.

7. You could cause a problem if an inheritance is distributed to a parent or family member that is being cared for by Medicaid in a nursing facility. Medicaid has strict income qualifications and the added income may disqualify their eligibility to continue to receive benefits.

As I have stated in the past, there are only two things in life that we can not avoid and they are death and taxes. We plan for taxes annually and we should do the same for our eventual death.