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Why it is Essential to have a Will

What do Abraham Lincoln, Martin Luther King, Jr., Michael Jackson, Jimi Hendrix, Howard Hughes, Amy Winehouse and Steve McNair all have in common? They passed away without a will. This isn't surprising given estimates that over 50% of adult Americans haven't taken the time to prepare one, according to [1]Lexis Nexis. Research indicates that the primary reasons most Americans do not have a will are the cost and time commitment required to prepare one, and because they do not think they have adequate assets to protect and bequeath. Parents with young children also forgo preparing a will because they can't decide on a guardian.

With the federal estate tax exclusion at $5,450,000, easily doubled for spouses, you may question the need for a will. But, the minimization of federal estate tax is not the only reason to have one. Minimizing state estate taxes is another reason. And many states have significantly lower state exclusion amounts (e.g. $675k in NJ). Perhaps more importantly, a will determines what happens to your family, money, home, and other property after you die. While there are many tools you can use to achieve your estate planning goals, a will is probably the most vital.

A will allows you to direct how financial assets and property are distributed. A will also allows you to nominate a guardian and an executor. A named guardian will act as the legal guardian for your minor children. An executor acts as your legal representative after your death. The executor carries out many estate settlement tasks, including locating your will, collecting your assets, paying legitimate creditor claims, paying any taxes owed by your estate, and distributing assets to your beneficiaries.

Regardless of your net worth, we advise that you have an updated estate plan if you have: 1) minor children, 2) concerns about a child or other beneficiary not being able to handle an inheritance, 3) a disabled child or beneficiary who could lose their government benefits, 4) no children, 5) a second marriage and/ or a blended family, 6) a same sex relationship or an unwed committed relationship, 7) are a recent widower, or 8) a recent divorcee.

When you pass away without a will, you are said to be dying "intestate." Your probate assets will be divided among your intestate heirs based on the intestate succession laws of the state where you lived at the time of your death, and the intestate succession laws of the state where you owned real estate and/or tangible personal property. Assets that are not part of this probate/intestate process include accounts with beneficiary designations (such as IRAs) and accounts (property) titled with Transfer on Death or Right of Survivorship. Each state has its own intestate laws (that apply to probate assets). In New Jersey for example, a surviving spouse with children would inherit everything. It gets complicated if there are children from a prior marriage or if there are no children and you are survived by at least one parent. In these cases,

the surviving spouse will only inherit part of the probate assets. The deceased's descendants and/or surviving parents would receive the remainder.

The absence of a will can cause the estate to be held up in courts, incur expenses and cause stress and hard feelings among the survivors. Even small estates are often disputed by relatives. My cousin experienced this when her husband suddenly passed away. Her in-laws came looking for money and possessions, and now they don't speak. I have also seen firsthand what happens when a couple with young children passes away without a will. The Courts had to decide who should be the guardians. Even though the courts do their best, the guardians chosen in this case were not the ones the couple would have wanted.

In addition to a will, there are a few other important documents that should be considered when putting together your estate plan: an Advance Medical Directive, a Financial Power of Attorney, a Letter of Instruction and a Living (Revocable) Trust.

The Advanced Medical Directive, also called a Medical Power of Attorney, allows you to give the person of your choice the right to make your personal and medical decisions if you are temporarily or permanently unable to do so. The Advanced Medical Directive also lets others know what medical treatment you would want.

The Financial Power of Attorney is the legal document necessary to delegate your financial authority. It allows you to choose someone to manage your assets if you're unable to do so for yourself. If the Power of Attorney is "durable," then the person you choose will have the immediate authority to take care of your property, and will continue to have this right even if you're determined to be mentally incapacitated. If the Power of Attorney is "springing," the person you choose won't have authority until after you have been determined mentally incompetent.

A Letter of Instruction is an informal, non-legal document that generally accompanies your will and is used to express your thoughts and directions regarding what is in the will, and/or about other things such as burial wishes or the location of documents.

Finally, a Revocable Trust may be appropriate for some. By placing title of assets into such a trust, you can minimize the cost and inconvenience of probate, which varies by state. This inconvenience can be exacerbated if property is held in multiple states. A Revocable Trust is also a private document. Wills are available to the public. If you value privacy in your estate, you may want to consider a Revocable Trust.

As always if you have any questions, please give us a call.

[1] http://www.lexisnexis.com/en-us/about-us/media/press-release.page?id=1270146453917826 (Majority of American Adults Remain Without Wills, New lawyers.comSM Survey Finds)

familiar with the legal provisions of the issues presented herein, as a Financial Advisors of RJFS, I am not qualified to render advice on legal matters. You should discuss specific legal matters with the appropriate professional.

Sincerely,

John G. Kaiser, CFP®