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So You Don't Think You Need A Will

If you're young, healthy and busy building up your assets, an estate plan to distribute those assets might be the furthest thing from your mind. If you're older, you might postpone estate planning simply because death is an unpleasant subject.

Whatever your age and life circumstances, you're doing yourself and your loved ones a great disservice if you don't prepare a will. A will is a written document that directs the disposition of your assets and provides other instructions upon your death.

What Happens Without A Will?

If you haven't written a will, you may be surprised to learn that the state of Virginia has effectively written one for you. Virginia, and every other state, has statutes that will determine your heirs if you die "intestate" - that is, without leaving a valid will. All states, including Virginia, also have formulas to help decide the amounts that each heir will receive. If you're unmarried and have no relatives, the state will probably award your assets to itself.

If what you've read so far isn't enough to send you running to an estate planning attorney, there's more. While the rules vary from state to state, if you die without a will and have children under age 18, the state will decide who will care for them - grandparents or siblings are typically the first choices for guardians. But if these parties don't agree with the state's ruling, a long, expensive and traumatic custody battle can ensue.

If you've been saving for the kids' college education and you leave no will, there's no guarantee that the state-appointed guardian won't spend that money on something else.

Then there's the matter of probate, the state court procedure that administers your estate and transfers title to your property upon your death. Probate applies whether you die with a will or not. It can be an expensive, arduous process under the best of circumstances. If you leave no will, it can drag out even longer as potential heirs fight for their share of your assets or control over your estate. Meanwhile, the probate process itself can generate substantial attorneys' fees that can reduce the value of your estate.

A Living Trust Isn't Enough

In recent years, the popularity of revocable living trusts has skyrocketed. With a living trust, you transfer assets into the trust during your lifetime. Upon your death, those assets go directly and immediately to the beneficiaries you've specified. Unlike a will, assets in a living trust don't have to go through probate. A will is a public document; a trust, in contrast, is a private document and may therefore be more difficult to challenge.

So why does someone with a living trust also need a will? A lot of people set up revocable trusts, but never quite get around to officially transferring ownership of their titled property - their house, investment accounts, etc. - from their name to that of the trust. The process of re-titling assets, called "funding" is as crucial to the successful operation of your trust as putting fuel in a race car is essential to finish the race. A will makes sure that any assets that aren't properly transferred to the trust during life still go where the owner wants them to go. A will also revokes any prior wills made by the decedent.

There are other reasons to have both a will and a living trust. If you have minor children, you'll generally need a will to nominate a guardian and make financial provisions for them in the event of your death. In addition, many people don't bother to put untitled personal property like furniture or antiques, into their living trusts. A will that spells out how you wish to distribute such assets might keep your heirs from battling over who should get family heirlooms or items of sentimental value.

Writing A Will

Working with a competent and experienced estate-planning attorney is probably the best way to cover all aspects of your estate plan, including a will. The prospect of meeting with an attorney can often be daunting, so it is important to find an attorney you will feel comfortable working with - from both a personality and cost perspective. Ask friends and family if they know an estate-planning attorney they have had a good experience with or ask other professionals you already work with, such as your CPA or brokerage representative.

This article was prepared by Midgett & Preti PC and is intended to provide general advice only. For answers or advice relating to a specific situation, you should consult a competent estate-planning lawyer.