

Estate planning is for everyone

Think you don't need a will and testament? Think again.

By Carey J. Messina

Estate planning is not just a luxury for the very wealthy or the very old. Because we cannot know what the future will bring, everyone should have an estate plan regardless of their assets or stage in life. Estate planning is not just drafting a will or avoiding taxes. When used in its broadest sense, it is a necessary tool to help achieve our life's goals.

Consider the following estate planning scenarios:

SCENARIO I

For a young married couple with several small children, the first concern is "who will take care of the children if we both die in an accident?" A will can be used to name a guardian who will take custody and care of minor children. In the same circumstance, testamentary trusts can be created in the will for the management of assets and life insurance proceeds until the children reach full maturity. Without a will and testamentary trust in this situation, the children gain control of the assets at age 18. In the event that one parent dies, the testamentary trust can be used to allow the surviving parent to manage the children's forced heirship portion and the will can provide for bequests to the surviving parent. "Forced heirship" is an archaic law which survives in Louisiana and which requires parents to leave their children who are under age 24 a portion of the parent's estate. Certain assets such as life insurance, retirement plan accounts and IRAs are not subject to Louisiana's forced heirship law.

SCENARIO II

Suppose our married couple is enjoying their retirement years and none of the children are forced heirs. The couple may want to each do a will leaving their assets to each other outright. Without a will the children will inherit the deceased parent's assets, subject to the surviving parent's use. With a simple will, the surviving spouse can have complete ownership and control of the assets, as opposed to the use, which could require the children to consent to the sale of assets such as the family home.

SCENARIO III

If your gross estate exceeds \$2 million this year (2007-2008), and you are married, you should consider a will in order to at least "defer" federal estate taxes until the death of the surviving spouse and possibly reduce or eliminate estate taxes altogether. Such deferral can be accomplished by outright bequests to the surviving spouse, by the grant of the lifetime use (usufruct) over assets to the surviving spouse, or the use of a marital deduction trust that provides lifetime income to the surviving spouse.

No estate plan is complete without the consideration of a power of attorney and a living will. The power of attorney allows another person, the agent, to handle your affairs if you are incapacitated. The agent can be given authority to pay bills, file income tax returns, sell property, make health care decisions and basically perform all other acts provided in the power of attorney. The expensive and time consuming alternative to a power of attorney is the legal process known as

"interdiction" in which a family member applies to the court to handle the affairs of an incapacitated person.

There are three fundamental principles for successful estate planning.

First, be ready to provide your advisor with all pertinent family, business, and financial information to help develop the plan. Second, make sure you understand the plan's objectives and how it will work.

Finally, remember that your will is a living document that may need periodic updating because of state and federal law changes, changes in your family circumstances or philanthropic goals. An "out of date" will can create unintended results

Estate planning is for everyone, and the moment to make your plans is now.



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