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Planning for Your Demise

By Aaron Skloff

Q: How important is it that we have a will? Are there other key estate planning documents we should have?

Let's face it; nobody wants to address their demise. That is a key reason why 69% of parents with children under the age of 18 do not have a will. But good estate planning can be as easy as 1, 2, 3 – literally. With just three basic estate planning documents you can determine who will receive your assets, who will take care of your children and who will make your medical decisions if you cannot.

The Will. If you pass away without a will (intestate) in New Jersey, your spouse is only entitled to the first \$50,000.00 outright. Your spouse must split the rest of your assets with your children, no matter how young or old they are. If you have no children, your parents are next in line. With a will, you decide to whom, when, and in what amounts your assets should be distributed. You select your executor or personal representative, the one who shall be responsible for the disposition of the estate.

A will must be written, signed by the testator (maker) and witnesses. The original copy is the legal document and must be signed. For a will to be legal in NJ you must have at least two witnesses. The testator and the witnesses are required to be present at the signing, and each must see the others sign the will. The witnesses do not have to read or know what the will contains. They must simply be told by the testator that it is his or her will, and asked to sign as witnesses.

Guardianship. Without a will, someone will need to file a court proceeding for guardianship of your minor children. This person may or may not be the person you would choose to be guardian and this person may be required to post a bond. The costs of this proceeding and the cost of the bond may be paid out of the value of your estate. With a will, you can specify the person who is to be guardian of your minor children and you can waive the requirement of a bond.

Without a will a court appointed executor will designate a person to manage your children's inheritance until they reach age of 18. Ideally, you may prefer they receive the money after they complete their college education or reach the age of 25. With a will, you can specify the person who will manage this money for your children, how the money is to be spent, and at what age your children will receive the money directly. Determining guardianship for your children can be one of the most serious decisions you will make in your lifetime. Think long and hard who the guardian(s) should be before making a decision.

Living Will. The legal name for the living will is the advanced directive. It permits you (the patient) to communicate, in advance, the medical care decisions you would make if you are rendered incapacitated. These clear instructions can circumvent a difficult decision your family may be forced to make otherwise. The living will is a relatively simple document that must be in writing, signed and dated in the presence of two subscribing adult witnesses, who must attest to the fact that the person is of sound mind and free from duress and undue influence.

Action Steps. Although the three estate planning documents listed above are of tremendous value, there are a number of variables that can add additional complications to your estate planning needs. Work closely with your financial advisor and estate attorney to develop an estate plan that meets your personal objectives.

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