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HAVE YOU DONE THE PLANNING THAT YOU SHOULD?

Do I need a will? For various reasons, people often put off preparing a will. However, most everyone should have one. Even if you have modest assets, if any are held individually, you should have a will that specifies who receives them upon your passing. Otherwise, the intestacy laws will determine who receives the property, which may not be the way you would choose and probate will likely be more time-consuming and expensive. For younger people, one of the most important reasons for making a will is to name a guardian for minor children.

Should I set up a trust? The short answer to this question is that it depends upon your particular situation and is an issue to discuss with an attorney. Certainly if your estate approaches or exceeds the amount at which it becomes a taxable estate, then you should seriously consider a trust. If professional trustee management services are desirable, then a trust may be beneficial. A trust arrangement is also private, unlike the contents of wills, which are public documents once filed with the Probate Court. Yet for smaller estates establishing a trust may not be necessary.

Can I avoid probate? Probate avoidance may be a worthy goal. The probate process not only results in legal expenses, but also takes time and effort. You also should be aware that many accounts, contracts, life insurance, etc. with beneficiaries designated to receive the asset upon death or which provide for joint ownership with a right of survivorship do not pass through probate, i.e., according to your will. This is a relatively simple way to provide for a smooth transition of assets. However, the titling of all assets should be carefully reviewed to prevent possible unintended consequences. If, for example, a parent planning for possible disability adds to an account the name of the child who lives closest, depending upon how the account is changed or retitled, there may be a presumption that those assets may become the sole property of that child upon the death of the parent, even though the parent's intent was that his or her assets be divided equally among all his or her children. Even if steps are taken to avoid probate altogether either through account designations or establishing a trust, a will is still recommended as an inexpensive precaution in case individually owned property is overlooked or later acquired.

Are there other steps that I should take? Wills should be periodically reviewed to determine whether they need to be **updated**. If someone named to receive a bequest, a personal representative or guardian predeceases the maker of a will or is no longer an appropriate choice, or any time there has been a birth, death, marriage or divorce, your will should be reviewed to see if it needs to be changed. Likewise, trusts (assuming that they are revocable or "living" trusts) should be periodically reviewed and may need to be changed.

If you expect any possible dispute regarding your funeral or other final disposition, you

can also designate someone to have “**custody and control**” of your remains, who will then be the final arbiter of any funeral, burial and/or cremation decisions.

What about planning for possible disability? People should also plan for their possible incapacity or disability. Anyone who has preferences regarding medical care, life support, and/or organ donation, and/or if there is any possibility for controversy (as with the Terry Schiavo situation), should have an **advance health care directive**, also sometimes known as a “living will”, that specifies the type of care that the individual does/does not want if he or she is unable to communicate with medical providers. In the same vein, but with a potentially much broader purpose, is a durable **power of attorney**. It is a very important and useful planning tool that may give someone else the necessary legal authority to take care of essentially all one’s affairs. It is usually thought of in terms of financial issues, but you can also designate an agent to make health care decisions for you.

For all of the above legal documents, an individual must be “competent” when they are signed, which is why it is important to have them prepared before the need arises.

Disclaimer: *The foregoing is not intended to be and should not be considered to be individualized legal advice; readers should discuss their own particular situations with an attorney.*