



If You Have No Will, Your State Will Distribute Your Property

Do You Really Need an Estate Plan?

by Alexandra Armstrong, CFP

I recently read an article about WeCroak, a new app devised to notify users five times a day at random intervals that, try as we may to ignore it, we all die. This app was devised based on Bhutanese folklore that says to be happy one should contemplate death five times a day. Strange as this concept might be, apparently this 99-cent app has become very popular, according to *The New York Times*.

It appears I'm on to something. Last month I wrote about planning your funeral. This month I'm writing about estate planning. You may think I have a thing about death. I don't really, but I've seen too many examples of the bad results when people didn't plan their estate ahead of time. I've observed that people think that if they don't plan for their demise, somehow they can prevent it. Of course that's ridiculous, since everyone eventually dies and the timing isn't predictable. It can happen at any time.

The new federal tax law raised the federal estate tax exemption to more than \$11 million from \$5.49 million per person. Based on this information, you might think you no longer need to do estate planning. From the point of view of paying federal estate taxes, you would be correct. According to the Joint Committee on Taxation, only 0.1 percent of U.S. estates will be taxed — really almost eliminating the estate tax for most people.

One reason you should consider estate planning is that even though you might not owe federal estate taxes, currently some states impose an estate tax, others have inheritance taxes and some have both. The same federal tax law reduced the deductibility of state income taxes for many people.

This may cause people to move out of high-income-tax states and thus reduce state tax revenue from estates. If this happens, more states may decide to impose estate taxes or raise them. To check whether your state charges estate/inheritance tax, access

<https://taxfoundation.org/does-your-state-have-estate-or-inheritance-tax/>

Another reason to do estate planning is to make sure your assets go to whom you want them to go. If you have no will, your state will dictate to whom your assets will go at your death. This may mean that if you're single, your estate goes to your parents, or if they aren't living, to your siblings in equal amounts. If you're married, it may mean part goes to your surviving spouse and part to the children. So to avoid potentially unintended unfavorable consequences, you should have a will.

Estate Planning Isn't That Difficult

I think one reason people procrastinate about estate planning is they believe it may be complicated. Actually, it isn't that complex. The first step is to make a list of the assets and liabilities currently held in your name so that you know what property will be transferred when you die. From that list you should exclude your retirement accounts and insurance policies. Since you designate a beneficiary for those assets, they pass outside the will. Also exclude jointly held property from this list because, here again, you've excluded those assets from those governed by your will.

It's important that you make a separate list of these other assets so that your beneficiaries are aware of their existence. Note that any joint titling or beneficiary designations take precedence over what's written in the will. For example, let's assume John has a son, Jim, and daughter, Jane. If John and Jim own a bank account together as joint tenants with rights of survivorship, but John's will says to distribute the account equally to both children, the titling will have priority and the account will go entirely to Jim.

Choosing an Executor

After you've determined what your estate assets are, you next need to select your personal representative or executor as well as who will serve as successors in this role if the person you selected is unable or unwilling to serve. This is a very important decision, as this is the person who makes sure your assets pass as stipulated in the will. An executor can be a person or an institution, such as a bank.

Many select a close, trusted family member, but make sure you ask that person's permission before naming him or her — you don't want any surprises!

It's important to choose someone who can be trusted as well as someone who can competently fulfill the task. Sometimes you don't have an appropriate family member, so you might delegate this duty to your lawyer or banker. I know in my case, I've told my personal representative, who is a family member, to be sure to hire an estate-planning lawyer to help her with the legal issues. I also stipulated that the estate should pay the lawyer's fees, but I want her to make the family decisions that aren't covered in the documents.

I've seen instances in which a widow names all her children as personal representatives to prevent family discord. It's been our experience that the reverse happens if there are multiple personal representatives. It works better if only one person is designated as the personal



representative, preferably one who's geographically near the deceased. If multiple decision-makers are involved, settling the estate becomes needlessly complicated and leads to family conflict.

Next, if you have minor children, you need to designate a guardian. This is a difficult decision and once again should involve having a frank conversation with the potential future guardians to make sure they'll accept this responsibility.

That conversation should also include your wishes for the children's futures and how those wishes will be funded. Sometimes it's best to name two guardians — one who will take care of the children physically and another who handles the finances. This way you can avoid conflicts of interest.

Once you have an idea of the amount and composition of personal representatives and guardians and have determined your beneficiaries, you're ready to consult an estate-planning attorney.

Seek an Estate-Planning Lawyer

Regardless of the size of your estate, it's important you work with a lawyer who specializes in estate planning; because of his experience, he can bring up issues you might not have previously considered. The lawyer will prepare a draft of the will for you to review. Assuming it covers what you want done, the final document is prepared. A will must be in writing and signed by the testator (the person making the will).

The will must also be signed by at least two competent witnesses who aren't beneficiaries in that document; requirements vary according to your state. The testator must declare that the will is the last will and testament and must do so in the presence of the witnesses who sign the document. A will that's corrected or marked up might be invalid. Every will should be dated to show which is the most recent.

Once you have a valid will, you should review it periodically or whenever you have major life events

including inheritances, change of marital status or residence. Most importantly you need to tell your family where the will is kept. Usually the lawyer keeps an original copy, but you want to make sure the family knows who your lawyer is and the contact information.

If you become a resident of another state, all final legal documents should be reviewed to ensure they're accepted by the new state of residence. You can change your will as often as you want unless you become incompetent or are under undue influence of another person.

Please note this article isn't intended as specific legal advice, as that should only come from qualified legal counsel.

This article is intended to motivate you to prepare a will or, if you have one, to reread it to make sure it still reflects your current wishes. Your family will be grateful you gave them this final gift! **B**

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