

Who Gets My Stuff?

The past few weeks, we have focused on issues surrounding readiness for death or disability, when others will have to make key decisions, find and deal with relevant paperwork, and take charge of business that may not have been their job beforehand. This last installment is on some thoughts about the disposition of assets. This is not expert advice, as we're not experts in this field, but we've seen things! Hopefully, this article will be an exercise in "preaching to the choir."

We were both fortunate in not having any fights associated with the distribution of our parents' stuff, but many families are driven apart by disappointment, anger, greed, betrayal-- a whole array of not-good feelings that can occur when the distribution of assets is seen as unfair in some way.

The Will

Regardless of whether you have a lot or a little, MAKE A WILL. Too many families avoid doing this because they think it's bad luck or too lugubrious or too painful to think of their own demise. But, just like taxes, death is a sure thing, and we can't take our stuff with us.

Like the funeral, the will is actually not for you, so much as it is about you. It is a document that is essential to your family. We're all going to go sometime, and things happen, so be prepared. As a corollary, review your existing will from time to time to be sure it is up to date and still reflects your wishes. Life changes for your beneficiaries, too.

Proactivity in making a will is not just good business sense, either. Having the time to talk over things with your spouse, children, or significant others is an act of compassion. Clarity on the financial aftermath of a death is so helpful. While there is always legal stuff to work out, the surviving spouse or other family members know where they stand, and if there is some neediness, this can be a real stress-reliever.

On the other hand, having no will just leaves behind a mess for the family to figure out, and the potential for fighting and hurt feelings, not to mention possible legal wrangling, is much greater. Its also much more time-consuming. State law may require (?) that more assets go to the state than to the family. Don't leave this to chance.

One last caveat: your will is not a weapon; it's a gift. We've all seen the murder mysteries where the wealthy and curmudgeonly patriarch of the family manipulates his family with threats to change his will (and then gets bumped off unceremoniously!) Be clear; be fair; be kind.

The Executor

It seems logical to name your spouse as executor, but your spouse may not have the gifts necessary to the task or the emotional strength to act in this capacity at the time. Who do you trust to deal with the details of this task? Who will have the time to do whatever needs to be done? Who is good with follow-through? Your attorney or another professional may be a good choice, especially if qualified family members live some distance from you.

What to Include

Many specific items can be identified “in bulk” (I leave all my tools to my son; all my jewelry to my daughter). As is often the case, you might leave all real property to your spouse and only designate how to divide those assets among others if the primary beneficiary predeceases you.

Items of value may better be named and described (Grandma Shivelhood’s antique emerald brooch) but an attachment with specific bequeaths can help your executor. Knickknacks, for example, that have value only as heirlooms can be listed. (Some people put labels in inconspicuous places to identify who gets it.) Of course, you can also gift these items to the person you prefer before you die.

Assets that have named beneficiaries are not included in a will (such as insurance policies and some investment instruments), as that step is already cared for. If all assets fit that category, there may be no need for a will.

It may be that there is someone who could reasonably expect to be a beneficiary, but whom you choose not to include. (Ouch.) For the sake of clarity, and to avoid any contest, name that person with a brief statement of exclusion.

Keep It Simple

Your attorney will best be able to help you figure out how to bequeath your assets in the most unambiguous way. Rather, for example, than leaving percentages of stuff to your heirs, designate specific amounts or particular investment assets. Insurance policies, which are not a part of your will, may be better devices for the percentage distribution because the value of the policy is known and doesn’t change.

Minor Beneficiaries and Trusts

You may choose to include minor children as direct recipients. Your attorney can help you determine how to set up a trust or other method to ensure that the bequest is administered properly. If you have direct responsibility for minor children, consider having a plan for who would be responsible for their care, should you no longer be able to provide it.

If a beneficiary is someone whom you think may be financially irresponsible, a trust or other instrument can allow you to make the gift in a way that offers some control on access to it.

Gifts to Charity

Churches, charities, foundations, relief agencies, educational institutions, and others are always glad of donations, and a gift from your estate is an easy way to give a meaningful (and perhaps sizable) contribution. Those institutions will be glad to provide guidance for how to provide a gift from your estate.