



WHY LIVING PEOPLE NEED ESTATE PLANS FREQUENTLY ASKED QUESTIONS IN ESTATE PLANNING

BY: ELISE S. WALD

Q. WHO NEEDS A WILL?

A. EVERYONE. Wills are not just for the rich. Regardless of your net worth, marital status, age or gender, everyone needs a Will. Estate planning allows you to plan for incapacity and death, thus avoiding the need for a conservatorship or probate, both of which are time-consuming, intrusive, and expensive.

Q. WHY DO YOU NEED A WILL?

A. A will is the foundation of your estate plan. It designates how and to whom your property will be distributed after death. Without a Will, you could be giving up your right to distribute your property as you wish. Further, without a Will, settling your estate could be troublesome and costly for your heirs because the Court will step in and distribute your assets according to the laws of your state. If you have no heirs and die without a Will, it's even possible the state may claim your estate.

For a parent, one of the most important functions of a Will is naming a guardian for minor children in the event that both parents die. Without a Will, the Court will appoint a guardian for your children.

Your Will also names an executor who is the personal representative after your death. Most people name their spouse, an adult child, a relative, friend or a trusted attorney as executor. The executor has several responsibilities, including administering the estate, distributing assets to beneficiaries, making certain tax decisions and filing tax returns.

It is important to have your Will reviewed every 3-5 years. If there has been a significant change in your life, such as a change in marital status, the birth of a child or a move to a new state, you should update your Will.

While do-it-yourself and internet Wills are popular, it is important to keep in mind that estate, probate and tax laws are complicated. By inadvertently omitting or misplacing a few words, you can make your will null and void. Therefore, when designing your Will, it is important to consult with a competent attorney who specializes in estate planning.

Q. WHY DO YOU NEED A TRUST?

A. A Will directs the disposition of your estate, but to accomplish longer term goals, a trust is much more effective. For goals such as funding a child's education or providing for young children's care, or caring for other relatives, instructions can be laid out in detail in a trust.

A trust is a legal agreement that is set up to transfer property to a trustee that will manage the property for the benefit of the beneficiaries. You can design the trust now and ensure that your wishes for the management and/or disbursement of your assets in the event of your death or incapacity will be carried out. A trust agreement is very personal and should be drafted very carefully.

Q. WHO NEEDS A TRUST?

A.

- Do you have an estate, including investments, property, physical possessions, and cash that could be worth more than \$1,000,000?
- Do you want to avoid probate upon death?
- Do you have specific desires or goals for the management and disbursements of your assets (despite the value of them)?
- Do you plan to leave an inheritance to children from a prior marriage?
- Do you have a child with a handicap or special needs or a relative with a disability who requires additional care?

* If you answered yes to any of these questions, a trust may be a wise decision.

You may also want to establish a trust if:

- You want to provide for the orderly disposition of assets to minor children without the need of the probate court;
- You want the ability to protect assets from a child's creditors;
- Your assets recently increased in value, such as with the purchase of a new home;
- Your marital status has changed (second marriages, divorce);
- You need to provide for children of a previous marriage;
- You have a change in residency; or
- Your estate includes property in two or more states.

Q. WHAT ARE THE BENEFITS OF A TRUST?

A.

- Ensuring your assets are managed as you wish after your death.
- Avoiding probate.

- Privacy (your Will is a public document – a trust isn't).
- Minimizing taxes.

A trust is a complex estate planning instrument and should therefore be carefully planned and drafted by an attorney specializing in estate planning in coordination with your accountant and/or financial professional.

Q. WHAT IS A HEALTH CARE PROXY AND LIVING WILL?

- A. A health care proxy gives your designated health care agent the authority to make important health care decisions for your medical well being in the event you are unable to do so. The Living Will is a written expression of your wishes concerning the use by doctors and hospitals of life-sustaining medicine and equipment which will artificially prolong your life should you suffer an incurable disease rendering you incapable of making a life or death decision. It is important that your agent and alternate agent have a clear understanding of your feelings in this area and that you are comfortable that such persons will act as you would wish them to. It is best to name a primary health care agent and an alternate agent in your proxy.

Q. WHAT IS A DURABLE POWER OF ATTORNEY?

- A. The durable power of attorney confers broad authority on your designated attorney-in fact, who acts as your agent in the event of your incapacity. Your attorney-in-fact will essentially step into your "shoes" in order to deal with your assets and other related issues (preparing and filing income tax returns). It is best to name an attorney-in-fact and a successor attorney-in-fact. This document can also be drafted so that it is effective immediately or becomes effective upon your incapacity.

If you would like more information about drafting any of the above-mentioned estate planning documents, or have any general estate planning related questions, please contact Elise S. Wald at (617) 589-3852 or ewald@davismalm.com.

© 2009, Davis, Malm & D'Agostine, P.C.

This article is provided as a courtesy and may not be relied upon as legal advice, or to avoid taxes and penalties. Any communication with the author as to its contents, does not, of itself, create a lawyer-client relationship. Under the ethical rules applicable to lawyers in some jurisdictions, this may be considered advertising.