

THE IMPORTANCE OF A WILL

After working hard your entire life to provide for your family, you should not allow the Texas Probate Code and the courts to decide how your assets are distributed. This newsletter points out the various problems of dying without a will and how these consequences are eliminated with a properly drafted will that disposes of your assets in accordance with your wishes.

Name Your Own Beneficiaries

When you die without a will, you are considered to die intestate and your property will pass in accordance with the descent and distribution provisions of the Texas Probate Code. Sometimes these individuals are the same you would provide for under your will, but not always. When you die with a will, the beneficiaries named under your will inherit your property exactly as you specify.

Reduce the Cost and Time of Probate

If you die without a will, the cost to probate your estate is substantially higher because of additional requirements, such as filing a determination of heirship with the court to decide the rightful heirs of your estate. This procedure is not necessary when the beneficiaries of your estate are named in your will. In addition to the increased expense, the probate process is substantially more time consuming if a dependent administration is required in which the court has to approve every action taken by the administrator. On the other hand, an independent executor named in your will administers your estate with minimal court supervision. This allows the probate process

to be completed in a timely and cost effective manner.

Name Your Own Executors

If you die without a will, the court will appoint an administrator of your estate based on the order specified in the Texas Probate Code. If you die with a will, the court will appoint the executor(s) named in your will before considering any other individuals.

Extend the Time in Which Beneficiaries Receive the Bulk of Your Estate

If you have minor children and you die without a will, your children will receive their share of your estate when they reach 18 years of age. With a properly drafted will, a contingent trust can hold your children's share until they turn an age that is more appropriate for them to receive the bulk of your estate. The trustee named in your will manages the children's inheritance until they turn an appropriate age. The trustee may make distributions to your children during the life of the trust for their health, education, maintenance and support. While the use of a contingent trust is most common when minor children are involved, they work just as well for any individual under a certain age or otherwise incapacitated. Any beneficiary designations for your life insurance policies or retirement plans should also be coordinated with your will to make sure they are distributed to the children's trust if they are under a certain age.

Eliminate or Reduce Any Estate Tax

Under current law, if your gross estate, including life insurance and retirement, is under two million dollars, your estate will typically pass tax-free to your beneficiaries. However, if your gross estate exceeds two million dollars, you should contact an estate

planning attorney to learn about several estate planning options that can eliminate or substantially reduce any estate tax which would otherwise be payable to the Internal Revenue Service. For example, a married couple can pass up to four million dollars of their estate tax free with a properly drafted estate planning will that includes the use of a bypass trust. With an estate tax rate as high as forty-six percent, this issue should not be

ignored and will be specifically addressed in a future newsletter.

While most people realize they should have a will, they still tend to procrastinate over having it done. Most attorneys can have a will prepared within days of the initial meeting, which will alleviate the many problems your loved ones will face if the time is not taken to get your affairs in order.

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