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Wills: The Cornerstone of Your Estate Plan

Now that tax season has come and gone, and you are able to see the flowers starting to bloom you might be beginning to think about the spring projects or annual cleaning for around the house. It is the perfect time to reflect on your life and your overall financial picture and ask yourself if your financial life is secure. Is your estate plan is buttoned up? Have you looked at your will to ensure your legacy can carry on and support your family in your absence? If you have not looked at your estate plan lately, that is a risk that could hurt your family.

There are many tools you can use to achieve your estate planning goals, but a will is probably the most vital. Even if you're young or your estate is modest, you should always have a legally valid and up-to-date will. This is especially important if you have minor children because, in many states, your will is the only legal way you can name a guardian for them. Although a will doesn't have to be drafted by an attorney to be valid, seeking an attorney's help can ensure that your will accomplishes what you intend.

Wills avoid intestacy

Probably the greatest advantage of a will is that it allows you to avoid intestacy. That is, with a will you get to choose who will get your property, rather than leave it up to state law. State intestate succession laws, in effect, provide a will for you if you die without one. This "intestate's will" distributes your property, in general terms, to your closest blood relatives in proportions dictated by law. However, the state's distribution may not be what you would have wanted. Intestacy also has other disadvantages, which include the possibility that your estate will owe more taxes than it would if you had created a valid will.

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Wills distribute property according to your wishes

Wills allow you to leave bequests (gifts) to anyone you want. You can leave your property to a surviving spouse, a child, other relatives, friends, a trust, a charity, or anyone you choose. There are some limits, however, on how you can distribute property using a will. For instance, your spouse may have certain rights with respect to your property, regardless of the provisions of your will.

Gifts through your will take the form of specific bequests (e.g., an heirloom, jewelry, furniture, or cash), general bequests, or a residuary bequest of what's left after your other gifts.

Wills allow you to nominate a guardian for your minor children

In many states, a will is your only means of stating who you want to act as legal guardian for your minor children if you die. You can name a personal guardian, who takes personal custody of the children, and a property guardian, who manages the children's assets. This can be the same person or different people. The probate court has final approval, but courts will usually approve your choice of guardian unless there are compelling reasons not to.

Wills allow you to nominate an executor

A will allows you to designate a person as your executor to act as your legal representative after your death. An executor carries out many estate settlement tasks, including locating your will, collecting your assets, paying legitimate creditor claims, paying any taxes owed by your estate, and distributing any remaining assets to your beneficiaries. Like naming a guardian, the probate court has final approval but will usually approve whomever you nominate.

Wills specify how to pay estate taxes and other expenses

The way in which estate taxes and other expenses are divided among your heirs is generally determined by state law unless you direct otherwise in your will. To ensure that the specific bequests you make to your beneficiaries are not reduced by taxes and other expenses, you can provide in your will that these costs be paid from your residuary estate. Or, you can specify which assets should be used or sold to pay these costs.

Wills can create a testamentary trust

You can create a trust in your will, known as a testamentary trust, that comes into being when your will is probated. Your will sets out the terms of the trust, such as who the trustee is, who the beneficiaries are, how the trust is funded, how the distributions should be made, and when the trust terminates. This can be especially

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important if you have a spouse or minor children who are unable to manage assets or property themselves.

Wills can fund a living trust

A living trust is a trust that you create during your lifetime. If you have a living trust, your will can transfer any assets that were not transferred to the trust while you were alive. This is known as a pour over will because the will "pours over" your estate to your living trust.

Will provisions can be challenged in court

Although it doesn't happen often, the validity of your will can be challenged, usually by an unhappy beneficiary or a disinherited heir. Some common claims state a lack of testamentary capacity when you signed the will are that you were unduly influenced by another individual when you drew up the will.

Plan Well

The due diligence of checking your estate plan once a year to ensure that you and your family are covered can reduce the risk to your family and create security to your loved ones in unforeseen events. As we have discussed this month, this is just one of the risks you may face in your finances. We approach risks and challenges in your plan with a wholistic approach to identify your goals and create a plan to achieve your financial goals.

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