

BACE LAW REPORT

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Estate Planning: Do You Really Need A Will?

People often wonder, “Why should I have a Will? I’m single, or recently married, I have no children, and little real assets.” Or, “Why should I care what happens when I’m gone?”

It is a frighteningly common misconception that only the rich or those with a number of children require an estate plan prior to their death. Death, and what would happen to young children in the event of a tragedy are thoughts that make us cringe. But, the idea that your estate and these concerns are left unplanned, should make you cringe even more.

The fact is, everyone is going to expire. Most of us work extremely hard every day to acquire wealth, and we toil over financial decisions. Yet, it has been estimated less than half of the population has an estate plan at the time of their death. Why is it that a vast majority think so little about what is going to happen to their assets, and their loved ones, in the tragic event that they pass unexpectedly?

Most people would react very negatively if the Commonwealth was going to decide how and when they spend their money during their life.

Then, why do so many allow the laws of the Commonwealth to dictate where their assets are distributed upon their death?

Wills and trusts are legal documents that allow us to ensure that our hard earned assets are distributed exactly as we wish upon our death. Life insurance proceeds usually transfer through contract if you pass without a will. Joint accounts you own with someone else, or jointly owned property (e.g. a joint checking account) would automatically transfer to the other joint owner upon your death if you pass without a will.

Everything else you own, every bill that needs to be paid, every child that needs to be fed, every vehicle, and investment property will be left without an owner – to float until the laws of the Commonwealth dictate ownership. The laws of intestacy are those that govern the ownership of property in the event someone dies without a will or estate plan.

For those that are single, or married, without children, a simple estate plan can avoid confusion and expense.

If you have children, especially minor children, an estate plan is absolutely essential.

The lack of estate planning may be a result of

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the fact that passing unexpectedly with minor children is an unthinkable tragedy. It is a situation none of us want to even consider a possibility. However, ensuring that your minor children are cared for in the event of such a tragedy, is critical, and may just leave you with comfort and piece of mind.

An estate plan names a trusted individual of your choice (executor) who will administrate, and see that your assets are distributed in accordance with the documents. More importantly, estate planning allows you to name individuals to serve as the guardian of your children until they reach the age of eighteen, and ensure to that they are raised according to your instructions.

Even more frightening about the lack of an estate plan is the lack of a Health Care Proxy. What if you are in an accident, incapacitated, and your loved ones are forced to make the decision as to your health care? Estate plans can include Powers of Attorney and Health Care Proxies to ensure someone will make medical decisions on your behalf in the event that you are incapacitated.

Your loved ones will be grieving. You do not want to add to the grieving process a complicated, expensive, and uneasy forced distribution through intestacy laws. And, you do not want to force your loved ones to determine whether or not you wish to be resuscitated. Drawing up an Estate Plan **now** can save your loved ones time,

money, and the hassle of picking up the pieces when you've passed. Your family will have enough to deal with; spending an inordinate time settling your estate should not be one of them.

Most attorneys who implement a value-billing scheme or philosophy can draft a simple estate plan for a fixed flat fee. The costs are predictable, and the results are yours. Call your attorney today.

Will - a Will is a legal document that can disperse your assets upon your death. Wills have no legal effect until you have expired, and must be "probated," which involves court supervision. A Will is only valid in the Commonwealth if it is executed properly with at least two disinterested witnesses.

Trust - a Trust document or agreement is actually viewed as an "individual" in the eyes of the law (E.g., Trusts can own property). Trusts can be created within a will (testamentary trust), or created and funded during your lifetime (inter vivos trust). Trusts name trustees who manage the property in the Trust for the benefit of a particular beneficiary. Assets passing via a Trust Agreement do not need the probate process.

Power of Attorney - a Power of Attorney is a powerful document that can allow another person to transfer property and handle your affairs for you. Those that are "durable" do not end upon your death. Those that are "springing" only take effect upon some event (such as incapacitation).

Health Care Proxy - a Health Care Proxy is a document that gives another individual the power to make health care decisions on your behalf.

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