

LAW REVIEW

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DO YOU NEED A WILL?

This is the fourth of our estate planning series, and we start with the question: Do I need a will? That is one of the most common questions asked of lawyers – at least estate planning lawyers. (The most commonly asked question of a criminal defense attorney is probably something like “What are my chances?” or “Do you think they’ll find the body?” Personal injury attorneys are probably asked, “How much will I get?” Clients ask me why I charge so much.)

Unless you have no assets and no kids, you should have a will. The more difficult question is do you need more than a will, such as a trust, to more creatively plan your estate and save taxes.

Some assets, such as life insurance policies, retirement accounts, joint bank accounts, and property held in joint tenancy, will automatically pass to beneficiaries without a will (but there is a tax disadvantage to holding property in joint tenancy if you are married).

All other property needs to be distributed through a will or trust or by the courts following California statutes.

A will gives explicit instructions for the distribution of your property.

It can help prevent family bickering over your assets. It can show how you intend to transition your business. It allows you to name an Executor to handle

your affairs, such as paying your debts and distributing your remaining assets – an important function.

Let me be blunt. Would you rather have your assets distributed as you wish, or have the government tell you -- after it takes its chunk?

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HAVE YOUR ASSETS DISTRIBUTED AS YOU WISH,
OR HAVE THE GOVERNMENT TELL YOU –
AFTER IT TAKES ITS CHUNK?

Simple wills are not that expensive. It's not like you are not going to die. Why *wouldn't* you want a will?

Die Without A Will

What happens if you die without a will? Without a will you have no opportunity to designate an Executor to handle your estate and to waive the somewhat expensive bond. You can't specify to whom your property goes. If you have children, you can name a guardian and set up a simple trust so they don't inherit at too young an age.

If you die intestate (fancy word for without a will), California laws specify that if you have two or more children, they receive 2/3 of your separate property and your spouse receives 1/3. "Separate property" are assets you acquire before marriage, or by gift or inheritance during marriage. If you die with one child and a spouse, the separate property is split 50-50, and if you die without children your spouse receives all of your property – separate and community, even if you would rather have some assets given to your friends or relatives.

For example, if you die without a will with three children and a spouse, your one-half of the community property goes to your spouse and your separate property is divided 1/3 to the spouse and 2/3 to the three kids equally. “Significant others” get nothing unless they are named in a will.

Without a will, your community property, generally property acquired during marriage, or “commingled” (mixed) separate and community property, goes to your spouse. With a will you may direct your community property to someone other than your spouse.

If you think for a moment that your heirs will graciously divide your assets when you die without a will, statistically you are wrong.

Why have a will

Even if you have a will it can become obsolete. Here’s a list of events that may justify having your will reviewed: Marriage, dissolution of marriage, new child (birth or adoption), death of a spouse or child or a grandchild, divorce of a child or named beneficiary, significant change in wealth or assets (up or down), inheritance, hitting the Lotto, moving out of state, family business issues and serious disagreements among family members. Of course, changes in the law may also create a need to have your will reviewed.

A common misconception is that having a will avoids the need for probate, which is the process of distributing your estate through the court system. A will guides the court but does not avoid the process nor the fees.

A simple revocable trust can help keep the estate from going through a time-consuming and often expensive probate. Even if you don’t have a large

estate, a living trust can be a good idea. If you and your spouse together have assets totaling \$300,000 or more, you definitely want to consider a trust, just to save probate fees - if nothing else.

Next week in the last of our estate planning series we will discuss some of the benefits of creating a trust.

DURING THE HOLIDAY SEASON
REMEMBER WHAT MATTERS MOST—FAMILY.
AND FRIENDS

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