

The Law and You We All Have Need for a Will

At this time of year we are faced with filing tax returns and perhaps paying more taxes. It has been commonly said that one thing is for sure: taxes and death.

Taxes may not be for sure, but our mortal life will definitely end. Precisely when, no one knows. But, most of us assume that day will come when we are very very old.

Statistically, that is correct. Nonetheless, our mortal existence may end at any time and without warning.

If each of us were given notice that our life were to end soon, and if at that time our mental acuity were sound, then we would have time to prepare a Will and other estate documents. Unfortunately, such notice is rarely given or our mental condition becomes insufficient to make testamentary decisions.

Young people often think they are immortal. Death is too remote to make plans. As a consequence, they rarely prepare a Will and related estate documents.

My column this month is directed to those younger adults who should prepare for that eventual day when their mortality ends. But older adults who have procrastinated can also benefit from reading my column.

The most frequent excuse I hear from younger adults concerning why they have not yet bothered to have a Will is that they have no estate to worry about. In part, that may be true. Younger people haven't had a lifetime to build an estate.

Another common excuse is that their house is the only substantial asset and it is held jointly in the names of a married couple. If one dies, the house is automatically vested in the surviving spouse. Again, true.

But what if both die together or nearly at the same? What happens to the house then? And, what if they have minor children? What happens to them and the house?

Most of us have definite ideas about how we want our estate to be distributed. We have even stronger ideas about who should have custody of our minor children. Yet, most young adults completely ignore the issue of custody for their minor children.

Either they don't want to think about it or they assume that magically everything will be alright. They simply do not want to consider the bad things that could happen.

To plan properly, parents can nominate in their Will the person or persons who should have custody of their minor children.

Perhaps it might be a brother, a sister, a grandparent, or perhaps a close and trusted friend. Either way, it should be the decision of the parents, not a governmental agency or a court.

Proper planning cannot avoid an untimely death, but it can avoid having minor children placed with someone not trusted or with whom no confidence exists.

Even if a couple's children are not minors but are still young adults, concerns may nonetheless exist about the ability of those children to manage even a small estate.

Perhaps the estate could be placed in trust and used for education, starting a business, or purchasing a home for the children. Without some sort of mature oversight, young adult children may simply "blow" their inheritance without regard to important, long-term needs.

Or, perhaps a child is disabled. An inheritance might be best placed in a Special Needs Trust to supplement governmental assistance during that child's lifetime.

There are other factors to consider if parents will take the time. Unfortunately, this important aspect of life is too often postponed until it is too late.

It is best to take steps now to put into place at least a simple Will that disposes of

assets as you wish and that provides for custody of your minor children.

Finally, to those who have a trust, you still need a Will so that any assets outside of the trust can be poured over into your trust. That way all dispositions of your property are made in accordance with your trust—one set of consistent instructions to follow.

Most importantly, do it now and don't procrastinate any longer.

In considering a Will and related documents, you should consult with an expert Elder Law Attorney. To locate an Elder Law Attorney, check your local Yellow Pages or the National Academy of Elder Law Attorneys at (520) 881-4005, or on their web site at www.naela.com.