

## **CAN YOU AFFORD TO BE WITHOUT A WILL??**

If you die without a will, the assets in your name will pass to your heirs according to the state's laws of descent and distribution (i.e., intestacy laws). Many people think they are satisfied with how the state will divvy up their assets, so they don't create wills. Others believe wills aren't necessary because:

- They've created vehicles to administer their assets and responsibilities when they die, such as owning property in joint tenancy or creating a living trust.
- They think their estates are too small to require a will.
- They have no descendants and plan to pass everything to a spouse.

If you think the same way, the following may surprise you.

### **Joint Tenancy Property**

If all of your property is held in joint tenancy with a right of survivorship or in tenancy by the entirety (which is often how spouses hold title to real estate in noncommunity property states), it will pass directly to the surviving owner. But, on the second spouse's death, an unnecessary tax may be due.

If your estate exceeds the federal estate and gift tax applicable exclusion amount (currently \$675,000 and gradually increasing to \$1 million by the year 2006 and thereafter), you could be missing an opportunity to pass assets estate tax free to heirs other than your spouse, such as your children and grandchildren. A will that creates a trust on your death which is designed to hold property with a fair market value equal to your applicable exclusion amount may avoid or minimize this tax, yet still allow your spouse to have full enjoyment of the assets. The trust could benefit your spouse during his or her lifetime, but it would not be included in his or her taxable estate on death because your spouse did not own the trust assets. At this time, the assets remaining in the trust may pass to your heirs, avoiding both estate taxes and probate.

### **Living Trusts**

If you have a revocable trust, such as a living trust or self declaration of trust, property will pass as directed under the trust agreement and you'll avoid probate. You may believe that you don't need a will because you've set up a trust that provides for the distribution of all of your property. But you need to consider the property you acquire through inheritance or property you inadvertently omitted from the trust. Without a will, that property passes pursuant to the intestacy laws and may require probate proceedings.

### **Small Estates**

If you think your estate is too small to warrant a will, think again. It may be worth more than you think. Property that cost you little may have appreciated. A will may help prevent unnecessary taxes if this is the case.

Unless you have placed all of your property in vehicles that avoid probate, your estate needs to be administered on your death. (Some examples of probate-avoiding vehicles include trusts and contractual

arrangements, such as annuities, individual retirement accounts, employee benefit plans and payable on death accounts, with designated beneficiaries.) In addition, any real estate in your own name will probably require probate, regardless of its value. The smaller the estate, the more important that it be administrated quickly because delays are costly.

### **More Reasons To Have a Will**

Updating your will periodically gives you the opportunity to re-evaluate your property ownership and financial situation. This is especially helpful considering that life is full of changes. Updating your will is often inexpensive and generally requires just a codicil.

Because your property will pass by operation of law to your surviving spouse, you may think that you don't need a will. But understand that on your spouse's death, his or her heirs-at-law may take all of that property. And you may not wish to benefit some of those individuals.

Creating a proper document is clearly essential. To ensure all factors are included, please give us a call. We'd be glad to help you create a will that achieves your goals and maximizes the value of your estate for your heirs.

### **WHAT YOU NEED TO INCLUDE IN YOUR WILL**

Here are just a few things to keep in mind as you are drafting your will:

- Name an executor and successor executors to administer your estate. Keep in mind that one executor may refuse to serve or may be unable to serve due to ill health or death. You may want to name a bank's trust department or a trust company as the initial or successor executor because it should always be around to serve.
- Identify those who are closest to you as definitively as possible. This will help ensure that bequests won't be made to a person other than the one you intend. Be sure to use an additional identifier, however, such as the person's relationship or residence, to avoid possible confusion later on.
- If you move, have an attorney in the state of your new residence review your will. Although all states recognize a proper will that was created in another state, some nuances may need to be addressed, such as executor powers and obligations.
- Keep your will in a safe place after you sign it, such as in a bank safe deposit box or with your attorney. You should also keep a duplicate copy (there should only be one signed original) and review it periodically to see if any changes in circumstances warrant an update.