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Why You Need a Will

By James S. Rizzo, Esq.*

The excuses abound for not having a Will: "I really don't have many assets, what's the point?"; "I'll be dead and gone, what do I care?"; "It's too expensive to complete with a lawyer"; etc. There is also the general denial factor that we all will, in fact, one day die. The truth is, usually for about the same time and money it takes to make a necessary vehicle repair, completing a Will can ensure a lifetime of assets and personal heirlooms go to your spouse, children and/or loved ones with clarity and ease upon your passing.

Generally, if you die without a Will, you are immediately putting the burden upon your loved ones to engage a lawyer and begin the process of establishing and then administering your estate, all while dealing with the grief of your passing. If your death is sudden and unexpected, the stress, turmoil and additional fees and expenses of settling your estate and determining guardians for minor children compound the emotional upheaval.

You are also allowing/requiring the government to determine, via state law and the court system, not only the care and control of any minor children but how your assets are to be distributed and to whom. Is that how you want your legacy determined? Without a Will any minor children will inherit once they turn 18, no matter the amount or the maturity/responsibility level of that child. With a Will, you control and designate who you want to care and be responsible for your minor children along with who will hold any assets in trust for them until they reach an age (generally 25) where they can responsibly handle such assets. Is there any more critical decision than who will care for your minor children and protect their assets in the event of a tragic accident or sudden illness?

Dying without a Will also creates more of a chance of litigation over your assets or worse, over the guardianship of your minor children. The reality is most families have some level of discord, whether it is among children, siblings and/or more distant relatives. Under a Will, you make the decision of an executor (the person who will see to it that your wishes are carried out) and a successor executor if that person is unable or unwilling to do it.

Without a Will, someone must apply for and be appointed by the Surrogate's Court as an administrator to ensure assets are accounted for and that State law is followed regarding their distribution (regardless of what you "intended" but did not establish in a Will). The family members either need to agree or may challenge such an appointment. Unfortunately, the prospect of "found money" can bring out the worst in people, resulting in challenges to the proposed estate administration and litigation.

A well drafted Will should contain a "no contest" clause which states in pertinent part that if a named beneficiary challenges the Will and claims a bigger share of assets, they will receive nothing if their claim fails in court. This clause is a strong deterrent to Will challenges and makes your wishes clearly known to your family and loved ones. There is no such protection against litigation without a Will.

Further, without a Will a bond may be required by the court to cover any expenses and claims against an estate, which increases expenses and the hardship on families. A Will can dispose of the requirement of an executor to post a bond, eliminating such costs.

If you have a child or spouse with a disability, the importance of a Will cannot be stressed enough. In this situation, a lawyer should draft language specifically addressing both the continued care of the disabled person and what happens to the assets they stand to inherit. For instance, in a Will you can direct assets to be held in trust for the disabled person in such a way as to not jeopardize or reduce any governmental or employment benefits they may be receiving. Without a Will, you lose that control which can disrupt such benefits and are leaving it up to the courts to decide the care of the disabled person.

Finally, extreme caution should be used if one is considering the so called "online" or "homemade" Will. What may seem like unnecessary legalese can in fact be a critical component of a well drafted Will. Wills in New York State also need to be signed in front of two independent witnesses and the person should be asked a series of questions in front of those witnesses to determine, among other things, they are of sound mind and memory and know exactly how their assets are to be distributed under the Will. Such measures are not only required under law but will strongly protect against challenges to your final wishes.

While the excuses to put off completing a Will are all too easy, the long lasting ramifications of dying without a Will on your family and loved ones are very real and in many instances, tragic. Usually one or two meetings with an attorney and properly completing a Will can and will bring peace of mind to you and your loved ones while avoiding the imposition of uncertainty, turmoil, stress and lengthy and costly court proceedings for those left behind. With all these issues at stake, the completion of a Will is not only necessary but should be a priority.

James S. Rizzo is an attorney with the law firm of Hilton Estate & Elder Law, LLC, with offices in Rome, Utica, Boonville and Lowville, NY. He has over twenty-one years of legal experience and concentrates in Estate Planning matters, including Wills, Revocable and Irrevocable Trusts, Powers of Attorney, Health Care Proxies, Asset Protection, Nursing Home/Medicaid planning and related Litigation issues. He can be reached at jsr@hiltonlawny.com or (315) 624-9600 for a free, confidential initial consultation.

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