
Planning Ahead: The Importance of Wills and Trusts

By Steven J. Dixon

Steven J. Dixon, "Planning Ahead: The Importance of Wills and Trusts," *Ensign*, June 1983, 28

Three sad examples: Mr. Jones's first wife passed away after a long illness. Several years later he married a woman whose first husband had been killed in an accident. Both Mr. Jones and his second wife had adult children by their prior marriages and both had brought separate property into the marriage. During their marriage, they transferred everything into joint ownership. When Mr. Jones passed away ten years later, all of his property passed to his second wife. When she died, all of their property went to her children. As a result, Mr. Jones's children received nothing.

Mrs. Brown passed away leaving her diamond wedding ring and a family chest. Mrs. Brown's four daughters each wanted the diamond ring and the family chest. There were feelings among the daughters, and now, years later, two of them still don't speak to each other.

Mr. and Mrs. Smith had five children. All were able to manage for themselves, except their youngest boy, who had a physical impairment. When Mr. and Mrs. Smith were both killed in an automobile accident, their property was distributed equally among all their children even though the youngest had a greater financial need than the other children.

All of these problems could have been eliminated or reduced through proper planning. An important part of financial and resource management is managing our property wisely during our lifetime in preparation for death. This applies to everyone—wealthy or not. Anyone who has possessions of any kind has an estate. Wisdom tells us that with death, our financial responsibilities do not end—they just change. Preparing for that change is called estate planning.

Estate Planning

The purpose of estate planning is to permit us to enjoy our property during life and then pass the unused portion to whomever we choose, with the least possible shrinkage in value. With wise planning, we can accomplish the following desirable ends: satisfy our personal needs and desires and those of our family, ensure that our property is left to the intended beneficiaries, designate someone to care for minor children, reduce family contentions, reduce the cost of transferring property upon death, and minimize income, gift, estate, and inheritance taxes.

The procedure to follow in planning an estate varies from family to family because no two financial or family situations are enough alike to make one plan suitable for all. Many different factors must be considered, such as the size, age, and health of your family; the nature and amount of your income; the business or professional training of

your spouse or children; the way you feel towards providing for members of the family after death; and your desire to make specific or charitable bequests to civic organizations, universities, or the Church. Whether your estate is large or small, your estate plan should be tailored to meet your specific needs and desires.

The first step to take in planning your estate is to list all of the assets you own, the form of ownership, and the approximate fair market value as of the date the list is prepared. This list should include any benefits payable upon death, such as life insurance or pension funds. Also list all liabilities or debts.

The next step is to determine not only to whom but also in what manner your property should be distributed. Consider special needs of children, parents, or spouse, so that additional hardships or burdens will not be placed on some beneficiaries while providing excess benefits to others.

After these two steps have been accomplished, consult a lawyer, who can suggest various ways to accomplish your desires and can prepare documents that comply with the laws of the state or country in which you live.

Wills

A proper will is the cornerstone of your estate plan. This is true whether you live in the United States, Canada, England, or many other countries. The laws of states and countries differ, but generally, any competent person who is eighteen years of age or over has the right and need to make a will. In order for a will to be valid, it must be dated and signed by the testator (the person leaving the will) and, depending upon local laws, by either two or three disinterested persons who serve as witnesses.

If the laws of your state or country allow, you may be able to make your own will, which is often referred to as a “holographic will.” To be valid, the document must be dated, signed, and, depending upon local laws, written either substantially or completely in your own handwriting. Holographic wills, however, should generally be avoided because they are harder to get approved in court, they are easier to contest because of the lack of independent witnesses, and mistakes are often made in preparing or signing these documents.

If you die without a will, you are considered to have died “intestate,” and your estate will be distributed according to the laws of your state or country. “Intestacy” is, in essence, a will drafted by your local legislature without regard to your individual or family needs and desires. This distribution is often undesirable and may be completely contrary to what you would have specified in a will. For example, depending upon the size of your estate, your spouse may have to share your estate with children and in-laws.

An important part of a will is the distribution of personal effects. This is especially true for things which have sentimental or intrinsic value. Even in the closest families, it is often very difficult for surviving children to decide among themselves how to distribute

items such as family heirlooms, antiques, wedding rings, sports equipment, china, pictures, etc. To avoid these types of problems, it would be wise to hold a family council now to discuss the distribution of these personal effects among your family. Decisions made in this manner are usually accepted by your children or other family members. This distribution should then be set forth in a will, or if local law allows, in a separate statement attached to the will. The practice of attaching stickers or other markers to objects, giving the name of the one to receive them, can cause problems. Stickers or markers can be switched or removed and will not be accepted by most courts if a problem arises.

In addition to providing for the distribution of property, a will serves two other very important functions. First, through a will you can appoint a personal representative (also referred to as an “executor”) to administer your will and make sure that your wishes are fulfilled. Second, you may appoint a guardian for your minor children if both you and your spouse die. Even if your estate is small, with very little property to distribute, a will increases the chances that your minor children will be cared for by someone you have personally selected. Without a will, the decision of who will raise minor children will be left entirely to the discretion of a judge. It is also wise to get prior permission of the guardian, to help ensure that he will actually serve if the need arises.

Because your will reflects your needs, desires, and financial circumstances as of the date it was signed, it should be revised and updated every three or four years. This ensures that your will still accomplishes what it was originally designed to do. Significant events may also require reviewing and updating your will—such as births, deaths, marriages, or divorces in your immediate family; the death or inability to serve of the personal representative or guardian; changes in your desires to make gifts in your will; substantial changes in the nature or value of your assets; the sale, loss, or transfer of property specifically left to a designated beneficiary; the purchase of property in another state or area where different local laws apply; or the attaining of the age of distribution (the age at which one would receive property under the will) by your children.

Care should be taken in changing or revoking a will. Generally, a prior will may be revoked by saying so in a later will, or by intentionally canceling or destroying the earlier will. Writing on the side of a will such things as “I hereby revoke this will” has been held by some courts to be insufficient to revoke the will. There have also been cases where wills intentionally discarded by the testator were considered valid because a second copy of the will existed. In other cases, individuals crossed out or otherwise changed the original will, but such modifications were held invalid because they did not comply with local laws. The best method of changing or revoking a will is either to amend the original will by a legal document commonly referred to as a “codicil,” or to create a new will which revokes all prior wills.

Trusts

In addition to wills, trusts are frequently used in estate planning for several reasons. First, a trust provides for someone to manage your assets. This can be especially helpful if

survivors are minors, physically or mentally incapacitated, or unfamiliar or inexperienced with wise financial management. Second, a trust provides for greater flexibility of income and asset distribution. Third, a trust can be used to reduce estate taxes and probate and administrative expenses.

A trust typically involves three persons: the “grantor” (who creates the trust), the “trustee” (who holds title for the benefit of another), and the “beneficiary” (who benefits from the trust property). There is a legal duty or obligation imposed upon the trustee to act with strict honesty and *solely* in the interest of the beneficiaries of the trust. This is commonly referred to as a “fiduciary obligation.”

Trusts can be set up in different ways. There are testamentary trusts which are created by a will and become effective at the time of your death. There are living trusts, also called “inter vivos” or “family” trusts, which are created during your lifetime and may continue after your death. Testamentary and living trusts are similar, except that living trusts are often used to reduce or eliminate the court proceedings, delays, and publicity associated with a probate proceeding.

There are other types of trusts which are used in appropriate situations, such as life insurance trusts, children’s trusts, etc. These trusts should be carefully distinguished from certain trusts which are suspect, called “family estate trusts,” “equity trusts,” or “constitutional trusts.” In the United States, these trusts are classified by the Internal Revenue Service as tax protestor schemes and should be avoided. They are sold as packaged promotion programs: you transfer to the trust all of your personal assets, including your rights to wages and salary; the trust then pays your personal living expenses, and the balance of your income is distributed to your children in lower tax brackets. These trusts *do not* decrease your taxes as advertised. You should seek competent legal and accounting advice in evaluating trusts.

Except as limited by local law, you can generally make your own rules about how your trust is to be operated. You can set rules to designate the purpose of the trust, the amount and type of property it will contain, the length of time it will last, who the beneficiaries are, how much the beneficiaries will receive, and when they will receive it.

As mentioned above, a trust normally provides greater flexibility than a will. Under a will, your property is typically divided equally among your children and distributed, depending upon local law, generally at eighteen years of age. This is done without consideration of your child’s needs or ability to handle finances. A trust, however, allows the property to be held for a longer period of time and to be distributed at various stages instead of all at once. For example, it could specify that in addition to supporting your children based upon their individual needs and circumstances, funds would be available to finance missions and pay college education costs. Then when the youngest reaches a specified age, the balance could be given to your beneficiaries. A trust can help you ensure that your property will be distributed the way you would have done it if you had lived to raise your children.

Probate

Contrary to what most people think, a will or a testamentary trust does not avoid probate (court action). (Of course, properly drawn *intervivos* trusts—trusts drawn up between living persons—are not subject to probate.) The purpose of a probate proceeding is to ensure that following your death all assets of your estate are accounted for, your debts and obligations are paid, and there is an orderly distribution of assets to your beneficiaries. A probate court will generally oversee the settlement and distribution of your estate.

The first step in the probate process in most areas is to appoint a personal representative to administer your estate. If you have no will or if you fail to name a personal representative who qualifies, the selection of the personal representative is based upon the priorities set by local law.

After the personal representative is appointed, notice is given to your creditors, who must file a claim against the estate within a specified period of time, usually three or four months. Failure to correctly file a claim will invalidate it.

At the close of the distribution, there is generally an accounting showing the items of property received, costs of distribution, amounts paid to creditors, and distributions to beneficiaries. It is through the distributions made by the personal representative that title of your property is transferred from you to your beneficiaries.

Regardless of your assets and holdings, estate planning should be a very important consideration in your life. Failure to plan your estate in a thoughtful and precise manner can result in many unnecessary problems for your family.

Gospel topic: self-reliance