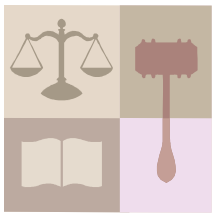

Wills and Estate Planning

by Mary Buettner
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In last month's column, I discussed several terms used in estate planning: wills, trusts, powers of attorney, and living wills. This month, I'll talk about wills in more detail.

A will is usually a simple document, designed to state who will receive your property after you die, and who will work with an attorney and the court system to distribute that property.

The first part, the naming of who receives your property after your death, usually involves two tiers. The first tier is composed of the people who are your first choice to receive the property. The second tier consists of alternates. For example, spouses often leave everything to each other. But they know it is unlikely that they will die together, so in their wills they also specify who should receive their property if their spouse dies before them. A will like this often leaves everything to the spouse, but if the spouse dies first, everything is left to the children in equal shares. More than two tiers can be established. For example, some people make provision in their wills for grandchildren or charities.

The second part involves the naming of an executor, also known as a personal representative. This person will work with an attorney to settle your estate. Just like the distribution part of the will, this part should also contain two tiers. That is, both an executor and an alternate executor should be named. That way, if the person named as executor is unable or unwilling to act, an alternate has been named to act.

Wills, like just about anything else, can be made more complicated. Some people set up trusts, called testamentary trusts, inside their wills. I'll talk about trusts in a later column, but for now, I'll mention that my preference is for wills to be simple. If a trust is used in an estate plan, I prefer that it be set up as a separate document.

People sometimes ask me what happens if they die without having a will. Sometimes people are concerned that the state will get their property if they don't have a will. The answer is that the state will not get your property (unless you have no living heirs, which is a fairly rare thing). However, if you do not have a will, the laws of the state where you live will determine who gets your property and who your executor will be. For a married person with children who dies without a will, the surviving spouse will get part of the property and the children will get part. State law determines what those parts are (for example, ½ to surviving spouse and ½ to children). Therefore, if you want your property to be divided in some other way, you must have a will (or a trust) to get that result.

A will can be revised if someone's circumstances change. An amendment to a will is called a "codicil." I tell clients to think about their wills and their estate plans when a major life event happens (like divorce, death, major illness, the birth of a child or grandchild, etc.).

Last, wills are like anything else: a little planning ahead can save money, aggravation, and unintended consequences in the long run.

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