

ESTATE PLANNING

Pondering your own mortality is probably not at the top of your list of New Year's resolutions. That may explain why fewer than half of adults, and even a smaller percentage of those with children, have a will. Perhaps without realizing it, they are trusting in the Commonwealth of Massachusetts to know how they want to divvy up their assets and choose who will raise their kids.

It doesn't have to be that way. Despite what you may think (or fear), estate planning for most people is fairly straightforward.

If you're starting out, and willing to be bound by the intestacy laws, you may not need a will. Your assets are apt to be modest, and if you die intestate (without a will) they will most likely go to your parents or siblings. But once you begin to accumulate things, it's more likely you'll develop your own ideas about who should get them when you're gone. For that, you need at least a simple will. Once you start a family, it's a huge mistake not to have a will. A will lets you name a guardian to raise your kids if you're not there to do it. If you don't name a guardian, the court will, typically choose from among your family members. Of course, the court's choice could be the last person you'd select. Just because we are related to someone doesn't mean we'd want him or her to raise our children.

As your family and assets grow or your family situation gets more complicated-perhaps through divorce and remarriage-the need for a will increases. If your assets are worth enough to trigger the federal estate tax - more than \$1 million this year you definitely need some estate planning.

You need a will anytime state law doesn't mesh with your plans. For example, the intestacy laws of the Commonwealth of Massachusetts give a surviving spouse only one-half of an estate (MGL c. 190, §1). And they don't give anything to stepchildren you haven't adopted or to charities you want to support. Friends don't get anything, either. In Massachusetts there is also no provision that life partners inherit from each other without wills.

With a will, however, you call the shots. But only assets that you own in your name fall under a will's jurisdiction. That means that many assets won't pass by will. For example, if you and your spouse own your home or investment accounts jointly with right of survivorship, they automatically go to the survivor. Life-insurance death benefits, balances in retirement accounts (such as IRAs, 401(k)s and Keogh plans), money in pay-on-death bank accounts and securities in transfer-on-death accounts also pass automatically to the listed beneficiary. Any assets in a revocable living trust go to heirs according to the terms of the trust.

Still, even if nearly everything you and your spouse own passes by some other means, you need a will to name a guardian for your children and decide who gets your property in the event you both die simultaneously.

When dealing with issues of guardianship of children, wills often use trusts for creative purposes. For example, a trust can hold funds for your children, with a trustee you choose doling out the money on the children's behalf for their education, health and maintenance. You can choose the ages at which they ultimately get the principal, perhaps one-third at age 25, another at 30 and the final

portion at 35. A trust for a disabled child can continue indefinitely. You can decide how the money is divided among your children--equally or not, as you prefer. You can also make sure children from a first marriage aren't left out in the cold by your new spouse.

If your estate is large enough to be threatened by the federal estate tax, you can incorporate provisions to soften the blow. This year, federal law permits each person to leave \$1 million in assets tax-free--in addition to the unlimited amount that can go to a surviving spouse. But leaving everything to a spouse can be a costly mistake if it inflates the survivor's estate to the level at which it may be hit by the tax.

To avoid this, couples should make sure each owns enough individually to take advantage of the \$ 1 million tax-free allowance, even if it means splitting jointly owned assets. Then, both husband and wife could include in their wills a trust (called a bypass or credit-shelter trust) to hold \$1 million, from which the survivor would get all the income and possibly some principal during his or her lifetime, with the balance going to the children upon the spouse's death. That \$1 million would go to the kids tax-free, rather than being included--and possibly taxed--in the surviving spouse's estate.

As important as wills are, they are only the beginning of a basic estate plan. Two other documents are critical: a durable power of attorney for financial matters, in which you name someone to manage your financial affairs if you become unable to do so; and a living will (also called an advance directive or health care proxy), in which you state your wishes about the use of life-sustaining treatment if you become terminally ill and are unable to make them clear. All of these documents are included in the basic estate planning provided by the attorneys at Lane, Lane & Kelly.

Many people procrastinate about their estate planning because they think that either it may be too expensive, or too complicated. Fees for a basic estate plan consisting of a set of husband-and-wife wills, financial durable powers of attorney, living wills and a review of beneficiary designations range from \$300-\$500. Wills involving tax planning trusts are generally going to be more expensive and range from \$1,000 - \$2,500. Don't put this off any longer. In about one hour an attorney in our office can go through a simple questionnaire with you and prepare your estate plan for your review within about a week.