

Wills and trusts

Don't delay any longer — get will done as soon as possible

It can be a very emotional process, but creating a will protects your assets

If you ask a group of lawyers how many have a will, very few will raise their hands.

Of those few, most of their wills were done so long ago they no longer reflect what the person wants. If some of the lawyer jokes prove true and some lawyers live forever, then those people do not need to read any further.

For the rest of us, a basic estate plan is a smart way to make sure that you and your loved ones are protected. At minimum, a basic estate plan should include a will, power of attorney and an advance directive.

What happens if a person dies without a valid will?

Without a will, Oregon law determines how your assets will be distributed. In legal terms, this is called "intestate succession." Though an intestate succession scheme may work for some, problems definitely arise.

For example, if a single woman dies without a will and without children, her assets will pass to her surviving parents. That distribution could cause further tax problems for the parents or disqualify them from any state or federal aid they may be receiving at that point.

If her parents do not survive, then her assets will pass to her siblings. If a married woman dies, either without children or with children from her spouse, her assets will pass to her husband. If a married woman dies and her children are

from a prior marriage, one-half of her estate will pass to those children and one-half will pass to her spouse. This may or may not be her intent. Similarly, Oregon law provides that a beneficiary can receive his or her share at age 18. Most people would not want their children to inherit large sums of money at age 18.

YOU SHOULD HAVE A WILL

Creating a will allows you to control the distribution of your assets. The will sets forth who will receive your assets, when they receive the assets and under what circumstances they will have use of the funds.

With a will, you can provide that your children's funds are held in trust for their care and designate when and under what circumstances the funds can be used. For example, a will provision could

Without a solid plan in place, Oregon law will make the decisions for you.

provide that a child will receive income and principal as needed for his or her care. Additionally, the child can receive distributions for his or her education including tuition, room and board.

Rather than a child receiving his or her share at age 18, ultimate distributions of a child's share can be staggered and made at whatever age you choose; e.g., a child



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could receive one-third of his or her share at age 25, one-half at age 30 and the remainder at age 35. Will provisions are flexible so that your intentions are fulfilled.

Additionally, a will allows you to designate a guardian and custodian for your minor children. If a child's parents are deceased, the parents should designate who will care for the child. If there is an argument of who will be the guardian, a court will have to make that decision. Most parents would like to choose who will take care of their children.

If you have a favorite charity or relative that you would like to receive a certain distribution, the law will not honor that wish unless it is specified in the will. Some types of charitable distributions can be structured to benefit your family and the charity.

MINIMIZE INHERITANCE TAX

Currently, each individual has a federal estate tax exemption in 2011 and 2012 for estates under \$5 million. Oregon's inheritance tax law imposes a tax on estates in excess of \$1 million. Generally for tax purposes, your estate includes the value of all of the assets you control. For married couples, it is important to make sure each spouse's exemptions are used to minimize estate taxes.

Though \$1 million may seem like a lot of money, a married couple with young children often have an estate for tax purposes in excess of \$1 million when you add in their life insurance and retirement accounts.

Some assets are not governed by your will. Any assets that do not pass automati-

cally by law will pass under the terms of your will.

The beneficiary designation on a retirement account or life insurance policy govern how those assets will be distributed regardless of the terms of your will. If you and your spouse own a home as tenants by the entirety, on the death of the first spouse, the home will pass to the surviving spouse regardless of the terms of your will.

A comprehensive estate plan in Oregon should also include an advance directive, which is a document provided for under Oregon law. Under the terms of the advance directive, you may designate a primary health care agent and an alternate agent to make medical decisions for you in the event you become ill, injured or otherwise incapacitated.

In addition, the document serves to address your directives to your physician as to the type of life support you want in the event of a terminal or debilitating illness.

Finally, to complete your estate plan, you should have a power of attorney. This document allows you to designate, during your life, an individual as your agent to conduct your financial affairs if you are unable to do so. This document may help avoid the need to establish a conservatorship in the event you become incapacitated.

A complete estate plan is beneficial to you during your life and at your death. Without a plan, Oregon law will make the decisions for you.

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