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WILLS, TRUSTS, and ESTATE PLANNING

Estate planning really means making important decisions for the people you love. If you do not plan, then when you die you are said to die "intestate." This means the laws of your State will determine what happens with your property and belongings with respect to your family and heirs. Quite simply, with an Estate Plan, you take control over your legacy.

Question: What is a will?

Answer: A will is far more than just a document telling the world who gets your assets. It lets you name important people such as an executor or personal representative, which is the person responsible to carry out your wishes. It also lets you name guardians, who are the people that you decide should watch over your minor children. A will is not a guarantee that your selected guardian will be named by the court, but your wishes are given first consideration.

Question: Do I need a will or a trust?

Answer: First, understand you do not have to be wealthy or elderly to think about an Estate Plan. If you have a home, a car, or checking or savings account, you have an estate that can benefit from an Estate Plan. With a will or a trust you decide who receives your property instead of letting the State and the Court make the decision. You choose your own personal representative. With the trust you can avoid the Probate Court altogether, and have significant control over what happens when you die.

It has been said that a will is somewhat like a seat belt. The reality is that you only ***need*** a seatbelt at the time of a collision; the problem is, you never know what that will be.

Question: What if I die with no will or trust?

Answer: The general rules are as follows: (i) if you die with a spouse and no children your spouse takes one half of your estate, and your parents share the remaining one half; (ii) if you die with the spouse and children, the spouse takes one half, and the children split the remaining half equally; (iii) if you're single with children, your children take everything equally; (iv) if you're single with no children, your parents take your entire estate.

Everything depends on the identity of your legal heirs, and there are special rules if you have children from a prior marriage, and special property rules for property acquired before and after your marriage.

Question: Can I exclude my spouse entirely?

Answer: Under Oklahoma law, you cannot completely exclude your surviving spouse. The spouse will get a certain portion of your estate, regardless of what your will says. As well, children or grandchildren may have certain rights to take a portion of your estate regardless of what you say in your will.

Question: Can I change my will or trust?

Answer: You can modify or revoke your will or revocable trust any time. Whenever there is significant change in the size or circumstance of your family or estate, it is wise to update these documents. However, to make changes, they must be made properly in the precise method set forth by law; otherwise, these changes may be ineffective and ignored.

Question: I have joint tenancy in all my property with my spouse, so do I need a will or trust?

Answer: Joint tenancy is a useful tool, but is not a replacement for a will or trust. A home or a bank account, for example, held in joint tenancy will pass to the surviving spouse by law. Importantly, however, there are potential problems with creditors and taxation with regards to joint tenancy upon death, and mishandling these matters can lead to complications and unnecessary expense.

As well, if both joint tenants die simultaneously, the concept of joint tenancy is irrelevant and unhelpful.

Question: Can I just get a form document from the Internet?

Answer: While tempting, this is strongly not recommended. There is very specific procedural law that must be precisely followed to have a will or trust be effective. Missing a legal technicality is an all too common error, which makes the resulting document completely ineffective. If this happens, which it often does with the do-it-yourself method, then upon death you are considered to be intestate (i.e., completely without a will).

Question: How much does it cost for an attorney to prepare a will or trust?

Answer: For the average person or married couple, a will or trust (or mirrored wills or trusts for both spouses) can cost between $500 on the low end, and $1,500 dollars for a moderately-complex will; more complexity means more cost. Note, however, many lawyers charge wide varieties of fees and fee types, and this is merely an estimate based on general observation and practice. Many things can complicate the process and lead to a higher cost, including things such as complicated business ownership interests, extensive and disparate assets, and complicated family structures.

Question: Can I handwrite my will?

Answer: In Oklahoma a will that is written completely by hand, and dated and signed in your own handwriting, and containing no typed or printed portions, is a valid will. The common problem with a handwritten will is not whether it is valid. The problem is usually that there are large portions simply not included. Examples include incomplete direction if an heir dies before you, incomplete personal representative designation, failure to waive a bond requirement, failing to limit specific powers of the personal representative, or failing to properly address estate taxes.

Question: What is a living will?

Answer: A living will is one part of a set of documents called an Advance Directive for Health Care. This addresses situations such having a terminal condition, you become persistently unconscious, or you have an end-stage condition. In these types of situations you can direct that your life not be extended by medical treatment. Again, as with a will, there are very specific legal procedures for ensuring your living will is valid and effective.

Question: What is a revocable trust or a living trust?

Answer: This is a document that provides for your property to be managed while you are living, unlike a will which is only effective after you die. A trustee is set up to manage your property for your benefit during your lifetime, or if you become incapacitated. Typically, you serve as the trustee until you die or become incapacitated, at which point a named trustee takes control. An advantage of a revocable trust over a will is that upon death you avoid Probate Court.

Question: Are there advantages of having a will instead of a trust?

Answer: First, a will is generally less expensive than a trust to prepare. A trust is more complicated because it affects management of your property during your lifetime as well as after death. Wills and trusts are generally considered to be different approaches to estate planning, but both are often used together. Also keep in mind that in your will you can provide that a trust be created. The answer to the question really depends on your specific situation.

Question: Can I do something other than a will or a trust?

Answer: Oklahoma law recognizes a "transfer on death deed" which transfers real property upon the death of the owner, with the owner keeping full ownership during their lifetime. Oklahoma also recognizes a "transfer on death" or "payable on death" method for other types of property such as bank accounts, corporate stock and personal property. Depending on your circumstances, these can be useful planning methods and are often used in conjunction with a will or a trust.

Question: What does probate cost?

Answer: According to the National Association of Financial and Estate Planning, the national average of a probate procedure runs between 4% and 10% of your estate value.

Question: I have a will, so why do I need probate?

Answer: This is one of the biggest misconceptions and estate planning. People often think that if their will is clear they can avoid probate. The reality is that your will is not effective *until it is probated*, regardless of how clear it is. Assets titled in your name cannot legally pass to your heirs until the Probate Court enters an Order.

Question: My family knows everything I want, so why do I need a will?

Answer: First, families, and people in general, get a little crazy from time to time, and not everyone is likely to remember everything the same. Disputes are common. Unfortunately, this happens all the time, and it is complicated and expensive for everyone.

Aside from this, without a will or trust, you run the risk of having significant estate and/or gift taxes levied on your assets. While there is nothing "wrong" with paying taxes unnecessarily, it is certainly expensive and undesirable and aggravating for everyone.

For a free consultation, please call Allison Legal at 405-888-6933, or email info@allisonlegal.com.