

## Does My Child Need a Will?

By Abbe I. Herbst

**M**ore than half of all American adults don't have wills or revocable trusts setting forth their instructions for how their assets are to be distributed after they die. The non-will percentage of younger adults, such as members of Generation X and Millennials, is even greater. When we think of our adult children, many of whom are now parents themselves, we know that they should be encouraged to plan for the future, and so we urge them to contribute to their retirement plans at work, to save for their children's educations, and perhaps even to have life insurance. Added to that adult "to-do" list should be the need to make a last will and testament.

### But What If My Child Has Little in the Way of Assets?

Even if an adult child doesn't have much now, it makes sense to think about the future and to whom the child would like those assets to pass. Without a will, the state of the child's domicile decrees who shall take by intestacy. In New York, if there is only a surviving spouse, that spouse is entitled to the entire estate. If there are children, too, then \$50,000 plus one-half passes to the spouse, and the remaining half to the children. This may be what most people would want, but it may also be advisable to hold the assets in trusts that can produce estate tax savings or protection from creditors. Such trusts must be specifically created. The law of intestacy doesn't provide for them.

If an adult child doesn't have a spouse or children, New York, New Jersey, California, Pennsylvania, Florida and most other states provide that it would be the child's parents who take by intestacy. If folks took the time to

consider the question, they might prefer that the assets pass to their siblings instead, rather than up one generation, to be subjected to estate taxes, and then ultimately pass to the siblings anyway, after the parents have died. Or perhaps there are significant others, or charitable organizations, that are the preferred recipients.

An even more compelling reason for a young person to have a will is to be able to designate a

guardian who would be responsible for the upbringing of the most cherished assets of all, the child's children. With a will, the choice can be made based on what is important to the person making the will. In addition, if it would be advisable to keep the monies in

trust for a certain period of time, or if the beneficiary has special medical or emotional needs, a will can address those concerns, too.

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### Making a Will Provides an Opportunity for a Financial Checkup

We try to go to our physicians for our annual checkups. I am not advocating that we should go to our estate planning lawyers on an annual basis, but periodic estate planning presents an opportunity for a financial checkup. As part of the estate planning process, the attorney looks to see that the ownership of assets and the beneficiary designations are proper and coalesce with the overall estate plan. Many times, a young, unmarried person, in the midst of filling out the





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employment forms of a new position, will simply designate "My Estate" as the beneficiary of a 401(k) plan or pension plan. That is probably the worst choice, and can result in the plan balance being paid out very soon after death, instead of the many decades of distributions that could be possible if a more thoughtful beneficiary designation were made.

If a vacation home is owned in a state other than where the owner lives, it may be advisable to place the ownership of that vacation home in a trust or a limited liability company. In that way, it may be possible to avoid a probate proceeding in the state where the vacation home is located, as well as in the state of the owner's primary home.

Perhaps more than those of us who are older, young people have embraced technology. As a result, many of their assets and records exist only online or in the cloud. For them, the days of paper statements and physical checks never existed, and they deal in the world of Bitcoin, PayPal, Apple Pay, etc. Estate planning forces them to focus on this potpourri of assets, to make sure that others know of their existence, and to create a record of critical passwords.

For young entrepreneurs, estate planning can be combined with business succession planning, so that buy-sell or shareholders' agreements can be negotiated with the other owners or key employees.

Estate planning is more than just wills and trusts. Estate planning also presents the opportunity to sign a power of attorney to authorize one or more people to conduct the financial affairs of the adult child. A health care proxy appoints a series of agents to make medical decisions if the patient is not in a condition to make those decisions himself or herself. An advance directive (often called a living will) sets forth one's wishes concerning end-of-life treatment. With so many jobs and occupations involving extensive travel far from home for extended periods of time, it is very important that there be designations of agents who can make those crucial decisions on behalf of the principal. ▲

