Why and When a Sweetheart Will (or No Will at All) is Not Enough

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Young couples at the stage where they are having children and purchasing their first home may not realize that they need estate planning. The assets a couple is likely to acquire in the early stages of building wealth, such as a home, retirement accounts and life insurance, often do not pass according to the terms of a Will.

Property passing by beneficiary designation, such as life insurance and retirement accounts, is distributed to the persons named in the beneficiary designation when the account owner dies. Similarly, when a couple purchases a home, they often choose to title the home in both of their names as joint tenants with a right of survivorship or as tenants by the entirety. When one of the owners dies, the surviving joint tenant automatically owns all of the property, without the need for a probate process.

A couple owning assets that pass by beneficiary designation and joint tenancy may think – “Why do I need any estate planning at all if everything passes automatically at my death?” or “Why not have a simple Will in which I leave all of my assets to my spouse?” (also known as a “Sweetheart Will”). To answer those questions, a person needs to understand what happens when he or she dies without a Will and the problems that can arise when a person has a Sweetheart Will that does not include other planning.

When a person dies without a Will:

- His or her property (other than property passing by joint tenancy or beneficiary designation) is distributed according to the default distribution laws of the state in which that person resides;
- Usually the default distribution laws provide for some portion of the estate to be distributed to the children, though most people assume it will all pass to the spouse; and
- If the decedent does not have a spouse or children, his or her property is distributed to other family members, such as parents and siblings.

A Sweetheart Will has several disadvantages.

- Because a Sweetheart Will may not provide for any trusts, minor children may inherit wealth outright before they are mature or capable enough to handle it in the event both spouses are deceased, which can add to guardianship costs;
- A Sweetheart Will does not incorporate tax planning and can lead to unexpected tax liability;
- The estate may need to go through the probate process (a court process which is time consuming and expensive); and
- Wills, once filed with the court, are documents that are accessible to the public.
Couples with minor children that do not even have “Sweetheart Wills” may be putting their loved ones in an even more difficult position if both spouses die in a common accident.

- A Will not only directs how a person’s assets are to be distributed at death, but also designates the persons who are to act as the guardians of minor children if both parents are deceased.
- The designation of guardians is not binding on the court, but courts typically honor the deceased parents’ wishes unless there is a compelling reason not to do so.

Some basic estate planning can solve many of the problems mentioned above.

- A Will can give the court direction with respect to the persons you want to act as guardians of your minor children;
- A Will can incorporate provisions that create trusts for children if both spouses have died and allow you to control a child’s access to wealth until he or she is old enough to manage the funds responsibly;
- Trusts for children can reduce the time and expense of formal guardianship proceedings; and
- The addition of a revocable trust or an insurance trust, when appropriately funded, can eliminate the need for probate proceedings at death, provide tax planning and keep the terms of your estate plan private.