

Legally Speaking

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“Where there’s a will . . . “

I ran across a disturbing article out of the Associated Press the other day which declared that in 2004 only 42 percent of adults have a will, a statistically significant drop of 5 percentage points from 2000. Procrastination has long been the principal culprit, but that would seem to me to be more or less a constant and not account for the relatively startling decline. The speculation is that the uncertain status of estate taxes and the rising unified exclusion (in 2004 the personal exclusion is \$1.5 million) has led many to conclude that a will just isn’t necessary, or at least not as important.

Truth be told, for the vast majority of us estate tax consequences are unlikely to be an issue for us. By some industry estimates, fewer than 1% of Americans have an estate of sufficient size to bring estate tax planning into the equation. Trouble is, a will serves a lot more important purposes than just minimizing or avoiding death taxes. Let me give you five good reasons for a will that have nothing to do with taxes.

First, you want to be sure that your estate goes to who you want it to, and not who the Colorado legislature thinks you want it to. This can be especially important in the case of blended families, with children coming into a marriage from earlier relationships. Colorado state intestate laws will not necessarily protect the children of the first to die in a blended family, or alternatively, may give a greater percentage to children of a distant relationship whom you might not want to benefit, especially if it comes at the expense of your present spouse.

Second, a will can readily and easily attend to the possibility that teenagers will suddenly come into a great deal of money without any adult supervision. The mere prospect of that should leave some of us (like me) sitting bolt upright in bed at night, the sheets drenched, screaming. Contingent minor trusts and Uniform Transfer to Minors Act (UTMA) gifts are fairly common attributes of a simple will, and will help you keep your bed linens on longer.

Third, for those of us with minor children, the will serves the vital function of appointing guardians and conservators for our kids in the event both parents die. I have seen families shredded over a contest between grandparents as to who gets the children, with children split apart from their own siblings as judges impose draconian compromises on warring family factions.

Fourth, a will appoints your Personal Representative, also known as your executor, and a back-up. Dying without a will potentially will put your estate in the hands of someone who knows nothing of your family, and who will expect to be paid handsomely for doing

something that family members typically do for nothing. Worse still, it can trigger a contest among siblings, (who have an equal statutory preference) as to who will be the PR. That contest alone can cost more in legal fees (often borne by your estate) than 10 or even 100 wills. And even that cost pales in comparison to the family alienation and personal anguish such lawsuits invariably entail.

Fifth, it's an inexpensive family insurance policy. For many of us, it's as easy as making an appointment with our legal assistance officer. Even if you have special wants or requirements that go beyond the comfort zone of your local JAG and need to go to someone specializing in estate planning, it's usually inexpensive and relatively painless. For us MOAAbites, the only answer to the question, "why don't you have a will" is the same as the basic cadet's answer to any "why" question—***No excuse, sir!***